

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

74-2639

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D'Onofrio-cross

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Q You mean after Herbert came Feeney?

3

A No. After D'Onofrio-Feeney, when Feeney left Kirschbaum, Feeney left D'Onofrio Feeney A.G. --

4

5

Q What was the business of this firm known as Herbert & D'Onofrio?

6

7

A A.G.?

8

Q Yes.

9

A Foreign mergers, acquisitions and manipulations.

10

Q Did you do any foreign mergers or acquisitions?

11

A We tried a few.

12

Q But you didn't do any?

13

A But we worked hard at it.

14

15

Q Other than the indictments which I have mentioned to you this afternoon, have you been named in any other indictments?

16

17

A Been named?

18

Q Yes, as a defendant or a co-conspirator.

19

A I cannot recall being named -- civil or criminal?

20

Q Let's start with criminal.

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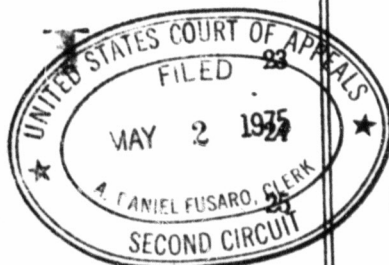
A Any other criminal, I don't think so, sir.

22

Q How about civil?

A Many.

MR. SORKIN: Your Honor, I don't think that is proper cross. Mr. D'Onofrio has been named in civil actions



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2 and I don't think that is proper impeachment.

3 MR. GOULD: I don't want to argue extensively,
4 your Honor, but if it deals with fraud --

5 MR. SORKIN: Mr. Gould, that is unnecessary.

6 THE COURT: You made your point, Mr. Sorkin. I
7 would agree that you are entitled to get into civil cases
8 if they have something to do with the credibility or the
9 issues here.

10 MR. GOULD: Those are the only ones I would ask
11 him about.

12 THE COURT: All right.

13 Q Tell us about civil charges against you.

14 A Mr. Gould, I couldn't begin to enumerate the civil
15 charges. If you have a list, you would help me a great
16 deal by calling them off.

17 THE COURT: I don't want every civil suit that
18 he could have had in his lifetime. I assume this has some-
19 thing to do with securities or his business operations,
20 as he has told us, or his firms in Zurich or in New York.

21 MR. GOULD: Your Honor may be assured I will
22 confine myself only to such things and should I deviate, my
23 assistants will be quick to bring me back on the trail.

24 Q In addition to these -- let's take the Securities
25 and Exchange Commission matters.

2 A That is easier for me.

3 Q Do you remember a matter called Resource Control?

4 A Yes, sir.

5 Q What is the excitement?

6 MR. SORKIN: Your Honor, I think the side bar
7 would be the better place for this --

8 MR. GOULD: I withdraw the question. I don't
9 want to waste time. It is not that important to me.

10 THE COURT: Go ahead.

11 Q Do you remember something called Galco Leasing, Inc.?

12 A Yes, sir.

13 Q That was the subject of a SEC proceeding in which
14 you were involved, right?

15 A And I was involved and I was convicted -- default
16 judgment by the Securities and Exchange Commission because
17 I was a fugitive at the time --

18 Q You were charged with fraud in that one?

19 A Yes, sir, manipulating the stock.

20 Q And fraud?

21 A Yes, sir, they go together.

22 Q And you didn't defend the case and they got a
23 judgment against you?

24 A I wouldn't defend the case. I would plead guilty
25 anyway. I did it.

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Q Before we pass from Galco Leasing, do you know who the stockholders were in that?

A Do you mean all of them?

Q No, sir, the important ones.

MR. SORKIN: Objection as to what is important.

MR. GOULD: Well taken. I will withdraw the question.

Q Was Sandra D'Onofrio a substantial stockholder of Galco?

A Yes, sir.

Q Who is Sandra D'Onofrio?

A My former wife.

Q Is she your first wife?

A My second wife.

Q What was the name of your first wife?

MR. SORKIN: I object to this, your Honor.

THE COURT: I will sustain that particular objection at this stage.

Q IPV, Inc. Does that ring a bell?

A Yes, sir.

Q Were you named in a SEC proceeding in that case?

A I don't know. I know there is an order of investigation, but I don't know if I was named --

Q We will let it go. Bio Derivatives, how about that

2 one?

3 A I thought there was a criminal indictment on
4 that one in one of the ones that you said I pleaded guilty to.

5 Q That is all you remember about it?

6 A No, I am guilty of it. That is not all I remember
7 of it.

8 Q Gold Chip Funding?

9 A Yes, sir.

10 Q What is that?

11 A It is a company.

12 Q I know, but was there any proceeding relating to
13 that company?

14 A There, I believe, is an order of investigation
15 by the SEC right now.

16 Q Have you testified in that case?

17 A I have testified to the SEC truthfully.

18 Q Sensory Systems, Inc.?

19 A S-e-n-s-o-r-y. That is a change of the name of
20 Training with the Pros, and I did a manipulation on that under
21 the new name in 1972, I guess. I am not sure.

22 Q That manipulation was in '72? With whom did you
23 do that?

24 A I don't think there is an indictment out on that,
25 sir --

End 2A

1 2b pm rmrf 1 D'Onofrio-cross

2 Q Do you want to claim your privilege?

3 A No, I don't want to claim privilege --

4 MR. SORKIN: There has been no indictment and the
5 Government disclosed, your Honor, what Mr. D'Onofrio
6 said he did, and there are no pending charges against
7 anyone with respect to the stocks Mr. Gould is talking
8 about.

9 MR. GOULD: He says he did a manipulation and
10 I would like to know with whom he did it.

11 MR. SORKIN: That was not the question.

12 MR. GOULD: I thought it was.

13 THE COURT: If you want to ask it, ask it again.

14 Q You did a manipulation with whom on that?

15 A With Mr. Herbert, Mr. Moss, who is now deceased,
16 and a Mr. Salmon from a NASD brokerage house, and I don't
17 recall other people at this point.

18 Q Stoller had nothing to do with that one?

19 A No, sir.

20 Q He was out of it?

21 A He was out.

22 Q He wasn't there?

23 A What do you mean?

24 Q He didn't do it with you?

25 A No, sir. I told you no.

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2 Q Nor Mr. Frank?

3 A No, sir.

4 Q He didn't do it either?

5 A No, sir.

6 Q Meridian Fast Foods, Inc.

7 A Yes, sir.

8 Q Did you do a manipulation on that one too?

9 A Yes, sir.

10 Q And there you were the subject of a judgment of
11 injunction, right?

12 A That is correct.

13 Q Obtained by the Securities and Exchange Commission?

14 A Yes, sir.

15 Q Charged with fraud?

16 A Fraud, manipulation and all the other things.

17 Q And Mr. Stoller had nothing to do with that one,
18 did he?

19 A No, sir.

20 Q You told us this morning you got some money from
21 an insurance company in Pennsylvania called Cosmopolitan?

22 A Yes, sir.

23 Q Is that a company called Cosmopolitan Investors
24 Funding Company?

25 A It is possible, sir. That could be the parent

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2 company.

3 Q Do you know of any proceedings against that company?

4 A I don't know. There may be an order of investiga-
5 tion concerning that company, sir.

6 Q Haven't you been questioned about it?

7 A Yes, I have, by the Securities and Exchange
8 Commission.

9 Q Do you know what the gravamen of the charges
10 are, if any, in that matter?

11 A Yes.

12 MR. SORKIN: I object. What does it have to do
13 with Mr. D'Onofrio? These are pending investigations and
14 I think Mr. Gould is fishing.

15 MR. GOULD: I am hardly fishing, your Honor.--

16 THE COURT: Since we got into the subject this
17 morning I don't see how I can fairly cut the defense off.
18 Your voice just dropped and perhaps Mr. D'Onofrio had the
19 same problem I had. I didn't get the last part of your
20 question.

21 Would you repeat it?

22 MR. GOULD: I asked him if he knew the substance
23 of the charges in that proceeding.

24 THE COURT: First of all, have there been any
25 charges?

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MR. GOULD: If any, I said.

THE WITNESS: No, sir, there are no charges.

THE COURT: I am just repeating for him --

MR. GOULD: If he doesn't know of any, that finishes it.

THE WITNESS: It is an order of investigation.

Q You said that was an insurance company this morning, didn't you?

A Yes, sir.

Q Is it an insurance company?

A It was an insurance company. They had about a hundred million dollars worth of life insurance in force. I would have to say yes. That may be the parent company's name or a subsidiary name.

Q How about a company called Australian Pacific Funding Management, did you ever hear of that?

A Yes, sir.

Q Is that connected with Cosmopolitan?

A No, sir.

Q Did you have anything to do with that?

A Yes, sir.

Q What did you have to do with that company?

A I owned the management company.

Q You owned Australian Pacific Fund --

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2 A Herbert & D'Onofrio AG owned the management
3 company -- half of the management company.

4 Q Were you in partnership with Cosmopolitan Funding
5 in that?

6 A Yes, sir.

7 Q So that Cosmopolitan Funding from which you say you
8 got the \$2,000 a month was a partner of yours --

9 A After.

10 Q Isn't that right?

11 A After, yes, sir -- about a year later.

12 Q How about Amitalia Fund Management Company?

13 A What is the question?

14 Q Did you have any interest in that?

15 A Herbert & D'Onofrio AG owned about 30 per cent
16 interest of that.

17 Q In partnership with Cosmopolitan?

18 A No, sir. Cosmopolitan was about a ten per cent
19 stockholder and the Italian Government owns the control,
20 I believe.

21 Q Did you have anything to do with the sale of
22 securities of Amitalia?

23 MR. SORKIN: Your Honor, I object. There are no
24 charges brought and this has no relevance to Training
25 With The Pros and I don't see why this cross is continuing.

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2 THE COURT: I couldn't answer whether there are
3 any charges brought. I wouldn't know.

4 MR. SORKIN: Mr. D'Onofrio said he didn't know.

5 THE WITNESS: That I know of.

6 THE COURT: You are now making a statement on
7 your own knowledge and I am telling you I wouldn't know.

8 MR. SORKIN: Maybe Mr. Gould would know --

9 MR. GOULD: How would I know?

10 THE COURT: The point is that hopefully you are
11 getting at something which is pertinent here, Mr. Gould.

12 MR. GOULD: Why, certainly.

13 Q Did you do a manipulation in Amitalia?

14 A No, sir. It is a listed fund quoted daily, includ-
15 ing today, in the International Herald Tribune for the benefit
16 of Italian citizens. It is a totally legal, well monitored
17 fund.

18 Q You own what part of it?

19 A My firm, Herbert & D'Onofrio AG, owned about 35
20 per cent of it and sold it about a year and a half ago.

21 Q For how much?

22 A For nothing. We gave it away for someone to
23 assume the responsibilities of managing it. We didn't
24 have the capabilities of running back and forth from
25 Milan, to Rome, to Luxembourg for the work. There was not

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- 2 enough profit in it unless I would be a crook, and
- 3 I couldn't be a crook in Italy at that time, I had enough
- 4 problems.
- 5 Q This was sole when, eight, ten months ago?
- 6 A No, sir, I would say about a year and a half
- 7 ago.
- 8 Q It was sold by you and Herbert?
- 9 A Actually, it was sold by Mr. Herbert. I was
- 10 not present, but it was with my proxy.
- 11 Q Herbert was another partner of yours?
- 12 A Not another, the same partner you have been
- 13 referring to.
- 14 Q Well, I understand your testimony to be, sir, and
- 15 please correct me if I have wrongly interpreted what you
- 16 have said, that for a number of years, at least going back
- 17 to 1968, you have engaged chiefly in the manipulation
- 18 of securities and fraud in the securities field, correct?
- 19 A That would be correct, sir.
- 20 Q And there came a time, as I understand you, when
- 21 you decided not to do that sort of thing any more?
- 22 A Yes, sir.
- 23 Q And that change in your attitude came about when?
- 24 A On my 55th day in solitary confinement in Her
- 25 Majesty's prison in Pentonville.

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2 Q Could you give me the approximate date of that?

3 A About May 1, 1973. I figured I had had enough.

4 Q So that we are clear, are we not, that up to May
5 1, 1973 you were engaged in this criminal activity and
6 you decided to give it up?

7 A That is correct.

8 Q To reform?

9 A To rehabilitate myself and live like a human
10 being the rest of my life.

11 Q That came about, as I understand your testimony,
12 as a personal and moral matter, correct? You look as if you
13 don't understand me.

14 A I understand your question, but I am just
15 trying to figure how to answer you, sir.

16 Q Very well.

17 A I thought over the fact that I was away from my
18 children, I have an epileptic daughter who was not being
19 cared for, I had an estranged wife who had divorced me as
20 a result of my criminal activities, I had had a widowed
21 mother I was supporting, an abandoned sister and her children.
22 I felt it was no good even if I beat the United States
23 Government in England to live in Zambia, where I had the
24 opportunity to go, or to Salonica. I had gotten my visas
25 and authorizations in England two days prior to being

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2 arrested by Scotland Yard and after considering all this I
3 preferred to make my peace with the United States Government,
4 return voluntarily, pay my duty and just for my crimes,
5 whatever I have to serve in prison, and when I get out,
6 live like a human being.

7 Q And you wanted nothing for this except the sense
8 that you were doing the right thing, is that correct?

9 A I wanted nothing, sir? Oh, no.

10 Q You wanted no compensation?

11 A You mean money?

12 Q Money or anything else.

13 A Originally I asked while cooperating for many,
14 many things. I called Mr. Morvillo of this office from
15 Switzerland and I asked him for everything but the sun and
16 the moon, a chauffeur and everything but a concubine,
17 and I was refused. After being captured, I had to subjugate
18 myself to the Government and make an agreement that was not
19 at all tasteful to me.

20 MR. SORKIN: Your Honor, may we have the date when
21 he called Mr. Morvillo?

22 THE WITNESS: In September of 1972 I called Mr.
23 Morvillo on a number of occasions with Mr. Brodsky and Mr.
24 Tighe and along was present Mr. Ryan from the United States
25 District Court in the Eastern District, head of the

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2 Criminal Division.

3 Q Where were you on October 3, 1972?

4 A God, I think I was in Switzerland.

5 Q Do you remember making a telephone call to Mr.
6 Morvillo on October 3, 1972?

7 A Yes, sir.

8 Q Do you remember where you were when you made that
9 call?

10 A I made that call from my home in Switzerland,
11 my flat.

12 Q In Zurich?

13 A Yes, sir.

14 Q You got on the telephone and placed a call
15 to Mr. Robert Morvillo?

16 A Placed many calls. That is one of them.

17 Q Actually you had made another call on September 28,
18 1972 to Mr. Brodsky?

19 A That is correct.

20 Q Who was Mr. Brodsky?

21 A The United States Attorney that indicted me in the
22 perjury case that caused me to run away from the United
23 States.

24 Q Who was Mr. Morvillo?

25 A I think he was Chief of the Criminal Division of

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2 this district at that time, or Assistant Chief.

3 Q You spoke on the telephone first with Brodsky and
4 then with his boss, Morvillo?

5 A Not exactly. First I spoke on the phone
6 with Mr. Brodsky and he told me that another person was
7 present in the room and he wanted him present on the speaker
8 phone and I believe it was Mr. Tigue --

9 Q Another Assistant United States Attorney?

10 A Yes. On the second call I had called for Joe
11 Ryan in the Eastern District to try to be at Mr. Morvillo's
12 office when I placed the second call so that he could be
13 on a speaker phone and at that time Mr. Morvillo,
14 Mr. Tigue, I don't remember if he was present, and Mr.
15 Brodsky and Mr. Ryan said he was there and a fourth United
16 States Attorney I can't recall.

17 Q Let's get down to this conversation with Morvillo.
18 We have it clear, you are talking from Zurich and talking
19 to Morvillo, the Chief of the Criminal Division.

20 A Yes, sir.

21 Q He has advised you he has you on the speaker phone
22 and present in the room are Mr. Brodsky, Mr. Ryan, Mr.
23 Tigue, and one other man whom you can't remember.

24 A He also advised me of something else.

25 Q What else?

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2 A He advised me, "Would you mind if we are taking
3 notes while you are talking?"

4 I said, "I don't mind if you are taking notes."

5 He says, "Are you taking notes while I am talking
6 to you?"

7 I said, "No, I am recording you at the home of
8 my partner, Mr. Herbert, and a full recording is being made
9 of your conversation."

10 He said, "Then we both know we are subject to making
11 notes, we don't have the recording equipment and you are
12 recording what we are talking about."

13 Q Did you record the conversation?

14 A Mr. Herbert recorded it for me while I was on the
15 phone at his home.

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Q He gave you the tape, right?

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A No, he has the tape.

4

Q He has the tape?

5

A Last in his possession.

6

Q You know that he has the tape?

7

A No, it may be in the defendant's hands now. I

8

don't know.

9

Q Didn't you ask him for the tape?

10

A No, sir.

11

Q Never wanted it?

12

A No.

13

Q Have you ever listened to the tape?

14

A No.

15

Q No interest in it?

16

A No, sir.

17

Q All right. Then we will talk about your recollec-

18

tion of the conversation first.

19

A Yes, sir.

20

Q You remember what you have said to Mr. Morvillo

21

and what Mr. Morvillo said to you?

22

A I remember Mr. Morvillo -- I don't remember who

23

saying what to what. I said to him that I would like to

24

return under certain conditions.

25

Q Right.

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A He says "You first tell me your conditions and then those that I can meet I will tell you immediately and those that I cannot acquiesce to, I will tell you."

He says, "What do you want?"

I says, "Well, (a), I don't want to go to jail."

Q Go slowly on this one, please.

A Okay.

Q Number one, you said you don't want to go to jail?

A Yes. He said, "That's possible. I cannot promise you that."

I think he came back quickly on that one.

Q All right.

A He says, "You would have to at least plead guilty to the already indictments that are now outstanding," which was one at the time.

Q All right.

A I said, "If I come back to the States, I want to be free to have my passport to travel."

Q All right.

A He says, "I don't see a problem with that, but I cannot promise you that at this point."

I said, "I would want a chauffeur to drive me back and forth if I am to be at this U. S. Courthouse every

1 day in the week or if I am going on your payroll, so to speak."

2 He said, "That could only be arranged if I were
3 put in protective custody and even then he doubts that, but
4 a U.S. marshal would take care of me and take me from place
5 to place if my life were in danger."
6

7 I asked him for a stipend, money, of so much a
8 week to live in the fashion in which I was accustomed to
9 living.

10 Q How much?

11 A I think I asked him for \$2000 a week. I think
12 he laughed in my face and so did everybody else on the
13 speaker phone.

14 He then referred back to Mr. Brodsky and said,
15 "David, do you know how much we pay normally witnesses?"

16 "Well," he says, "it depends on how many children
17 he has got or dependents."

18 He said, "But, Ray, how many children?"

19 I said, "I have two by my first wife and an adopted
20 son by my second wife."

21 He says, "You will get around eight or \$900 a
22 month if you were in protective custody. If you are not
23 in protective custody, you just get the \$20 a day and \$16
24 for your roof and eating."

25 I asked him for so many ridiculous things that Mr.

1 gab-4
2 Ryan then remarked,--The Godfather was a current picture --
3 he says, "Ray, you just gave the Southern District an
4 offer they couldn't accept."

5 So Mr. Morvillo said, "Let's think about it and
6 have him call him back and we will give him the answer in
7 a couple of days."

8 I then placed the call in a couple of days and he
9 then told me what he would agree to.

10 Q Would you bear with me a moment. I just want
11 to exhaust that first convers-tions and we will come back
12 to the one a couple of days later.

13 A I am sorry, Mr.Gould.

14 Q On this first conversation, do you remember how
15 long it took?

16 A To talk to him?

17 Q Yes, to talk to him and these other people.

18 A About 40-some odd minutes. Oh, there was more of
19 that conversation. He asked me if -- how many cases I could
20 testify in, and I -- I used my own vernacular. "In
21 other words, how many bodies can I deliver?"

22 I said, I don't know, Mr. Morvillo or Mr.Brodsky,
23 whoever was on the phone. I think Morvillo had to leave
24 at that point.

25 I said, "I know a little about a few cases, " and

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2 I mentioned some people. I don't recall those that
3 I knew that had committed crimes, that I could testify on
4 behalf of the Government.

5 They mentioned some that I did not know about,
6 they mentioned to me that I did not know about.

7 Then I asked for something beautiful. I asked
8 for veto power.

9 Q Veto power?

10 A Veto power.

11 Q What did you mean by that?

12 A I wanted -- I had the rank stupidity of thinking
13 that if the Department of Justice wanted to indict my
14 sister, then I could proclaim a veto. I am sorry, but this
15 is what I felt, you know, because she may have been involved
16 in some of my manipulations through handling my moneys or
17 something. I asked for veto power. That may have been 83
18 minutes of the 46 minutes of laughter.

19 So there are an awful lot of things. You have
20 got in front of you the memo. I am trying to recollect.
21 I would like you now --

22 Q Haven't you seen this memo in the last couple of
23 days?

24 A No.

25 Q Nobody showed it to you?

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2 A Last time I saw that memo --

3 Q When was it?

4 A Three weeks ago, and didn't even go through it, for
5 that matter.

6 Q You are telling us now that a few weeks ago you
7 saw a memo of the conversation between yourself and Mr.
8 Morvillo?

9 A No, I delivered it to the U. S. Department of
10 Justice.

11 Q You did really?

12 MR. GOULD: May we have it, Mr. Sorkin?

13 MR. SORKIN: I think the witness is confused.

14 MR. GOULD: I don't know if he is confused.

15 THE WITNESS: I am sorry. I --

16 MR. SORKIN: Excuse me. Mr. Gould was delivered
17 as Government Exhibit 3501 --

18 MR. GOULD: If your Honor please, if there is
19 going to be any discussion of the fact he says he delivered
20 a memo to the U. S. Attorney's office, I suggest it be at
21 the side bar or in the robing room.

22 THE COURT: I suggest to all of you, instead of
23 talking at ones, we will do just that. We will indeed do
24 more. We will take the afternoon recess.

25 Ten minutes, I suspect, ladies and gentlemen.

1 Will counsel please come to the side bar with
2 the court reporter.
3

4 (Jury absent.)

5 (In the robing room.)

6 MR. GOULD: Your Honor, the reason that I un-
7 doubtedly conveyed to you a sense of melodrama in the
8 treatment of this subject is that this memorandum, which
9 is 3501HH, is the paper to which I referred yesterday ,
10 that was delivered to us yesterday morning --

11 MR. SORKIN: Monday morning.

12 MR. GOULD: Yesterday morning, with the statement
13 that they hadn't found it before, they didn't know about it or
14 some baloney like that.

15 Now, this is a very interesting document. This
16 is a memorandum prepared by Robert Morvillo back in 1972,
17 and it is just what the witness was talking about. It is a
18 memorandum of these two telephone conversations, one with
19 Brodsky on September 28, and one with Morvillo on
20 October 3, and it describes what went on, the bargaining that
21 went on between them.

22 Now, the Government represented to us yesterday
23 that they didn't know about the memorandum, they found it
24 turned up yesterday.

25 The witness says, I turned a memorandum over to

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2 this -- what did he say?

3 MR. ALENSTEIN: Three weeks ago.

4 MR. GOULD: Three weeks ago.

5 MR. FELDSHUH: A few weeks ago.

6 MR. GOULD: And he thinks that the memorandum
7 from which I am cross-examining him is the memorandum
8 that he says he turned over to them three weeks ago.

9 Now, somebody is telling one great big lie about
10 this memorandum. Either there is a memorandum that the wit-
11 ness turned over to them or there isn't.

12 If there is such a memorandum, then there has been
13 what I will consider charitably a conspicuous violation of
14 Rule 3500 and certainly enough to merit an inquiry into the
15 quality of the professional conduct involved.

16 If, on the other hand, the witness is indeed quali-
17 fied and the witness is referring to this memorandum, 3501HH,
18 then the representation made to us by the Government that
19 this memorandum had been overlooked and didn't come to light
20 until Monday is a false representation and the same observa-
21 tions I make about the violation of the statute and the
22 quality of the professional conduct are applicable to it.

23 With that I would like Mr. Sorkin to respond.

24 MR. SORKIN: I will do so, your Honor.

25 Your Honor, this is a memorandum --

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2 THE COURT: I have 3501HH in front of me, so
3 you don't have to describe it.

4 MR. SORKIN: All right, your Honor, this memo is
5 a memo that was prepared by Mr. Morvillo and Mr. Brodsky.

6 THE COURT: Obviously. Let's not dilate on the
7 obvious. That has --

8 MR. SORKIN: During the course of the Pfingst case,
9 your Honor, it was my understanding, having spoken to Joe
10 Ryan in the Eastern District, that this memo became a
11 public document, that it was brought up and the whole
12 D'Onofrio deal was discussed and it seems everybody in the
13 world knew about this particular memo.

14 THE COURT: What does that have to do about our
15 case?

16 MR. SORKIN: I am not aware of Mr. D'Onofrio turning
17 over a document, this memo, three week ago. I am aware,
18 your Honor, of going through my files once again for the last
19 time this weekend, talking to Mr. Doonan and saying, "Tom, I
20 think this is a public record, but I think it is also 3500.
21 Do you think we ought to turn it over?"

22 He says, "Yes, let's give it to them anyway,
23 they probably got it in the Eastern District."

24 We prepared it, xeroxed it Sunday. Before
25 Mr.D'Onofrio;s cross we turned it over to them.

1 gab-10

D'Onofrio-cross

2 MR. GOULD: I would like to interrupt if I may.
3 Is Doonan with D'Onofrio now?

4 MR. SORKIN: I don't know.

5 MR. GOULD: Would you go and find out if Mr.
6 Doonan is with D'Onofrio? May I have your Honor direct that
7 for an obvious reason?

8 THE COURT: No, I am going to direct that Mr.
9 D'Onofrio come in here in a moment.

10 Now, let's calm down here. Wait a minute, I want
11 to talk to you, Mr. Sorkin. You seem to be missing the point
12 that I understand Mr. Gould to be making. He doesn't
13 question you turned this over to him yesterday morning before
14 cross began. What he is concerned about is the existence
15 possibly of another memorandum.

16 Isn't that a fair surmise from what you told us?

17 MR. GOULD: That is right.

18 THE COURT: It may well be confusion on the wit-
19 ness' part, it may be a number of things. I think the best
20 thing to do is ask. Before I ask Mr. D'Onofrio, I ask you:
21 To your knowledge, is there any other memorandum of these
22 phone calls between D'Onofrio abroad somewhere and representa-
23 tives of your office back in 1972? Such as David Brodsky
24 and Robert Morvillo?

25 MR. SORKIN: Your Honor, to my knowledge this is

1 gab-11

D'Onofrio-cross

2 the only memo that Mr. Morvillo prepared. I think I
3 did turn --

4 THE COURT: No, I didn't say prepared by Morvillo.
5 Any kind of a document relating to those conversations or,
6 as Mr. Gould succinctly puts it, these conversations about
7 bargaining.

8 MR. SORKIN: There are other memos which I turned
9 over as part of 3500, your Honor.

10 THE COURT: But you say everything that the
11 Government has, to your knowledge, has been turned over?

12 MR. SORKIN: Yes, your Honor.

13 THE COURT: All right.

14 MR. SORKIN: I turned over Eastern District memos --

15 THE COURT: Mr. Sorkin, you have a compassion for
16 peripheral details and emotional output which I do not find
17 satisfactory from your point of view --

18 MR. SORKIN: I am sorry, your Honor.

19 THE COURT: -- not to mention mine, which I can't
20 politely describe in this room.

21 I simply want to find out, Mr. Sorkin, what we
22 have. I repeat: forget who drafted the memos. In your
23 judgment, to your knowledge, you have turned over everything
24 on this subject which the Government has?

25 MR. SORKIN: Yes, your Honor.

1 gab-12

D'Onofrio-cross

2 THE COURT: All right.

3 MR. GOULD: Would your Honor reserve on that for
4 one moment? He said he turned over several things to us.
5 I am getting what he did turn over. I would just like
6 to clarify it.

7 THE COURT: On this subject. I am not dealing --

8 MR. GOULD: Only this subject. That is all I am
9 talking about.

10 THE COURT: All right.

11 MR. GOULD: I understood him to say to me that
12 he has turned over to us every existing memorandum of a con-
13 versation between this D'Onofrio and members of the U. S.
14 Attorney's office relating to -- every memorandum of a
15 conversation between D'Onofrio and members of the staff of
16 this office. I know of this one and I have just asked Mr.
17 Alenstein to go out and get us whatever we have, and then I
18 would like to ask Mr. Sorkin for a professional representation
19 that those documents, this one here, 3501HH and this statement
20 of April 19, 1973 -- I want him to make a representation
21 to the Court that those are the only existing memoranda of
22 conversations between D'Onofrio and people in the U. S.
23 Attorney's office relating to bargaining. I have tried
24 to simplify it as much as I can.

25 THE COURT: That is a fair request.

1 gab-13 D'Onofrio-cross 424
2 MR. SORKIN: As far as I know, I have turned over
3 every single memo that I am aware of. I reviewed -- I
4 would like to tell the Court what I did.

5 I reviewed all the files that were given to me by
6 Mr. Brodsky and I reviewed all the files that were turned
7 over by Mr. Tigue, and these are the only documents that
8 I have been able to come up with.

9 THE COURT: Let me press one more point, which
10 is explicit from Mr. Gould's submission. It is possible to
11 interpret what D'Onofrio just said to suggest, although I am
12 not as clear on this as Mr. Gould apparently is -- I want to
13 ask you, Mr. Sorkin, to your knowledge, did this witness turn
14 over two or three weeks ago anything to you or one of your
15 associates on the subject of bargaining, conversations or
16 whatever kind of conversations between Messrs. Morvillo,
17 Brodsky, Ryan and/or any other Assistant in the year 1972?

18 MR. SORKIN: Your Honor, to me he did not. If
19 he --

20 THE COURT: Would you ask Mr. D'Onofrio to come in
21 here and tell us whether or not --

22 MR. GOULD: Could we first ask Mr. Doonan whether
23 he got anything?

24 THE COURT: Would you ask Mr. Doonan to come in,
25 too.

1 gab-14

D'Onofrio-cross

2 MR. GOULD: I would like to hear what he says.

3 (Mr. Doonan and Mr. D'Onofrio entered the
4 robing room.)

5 THE COURT: I want to ask you a question if I
6 may, Mr. D'Onofrio. Do you remember a few moments ago
7 before the jury, before our recess in response to one or more
8 questions by Milton Gould, Esquire, you said something to
9 the effect that you mentioned a memorandum that you under-
10 stood Mr. Gould to be using and questions about the Morvillo,
11 Ryan, Brodsky --

12 THE WITNESS: I thought he was talking about the
13 second --

14 THE COURT: I am not criticizing you, I just want
15 to refresh you.

16 You said or suggested, as I recall it, that you
17 last saw a memorandum on this subject two or three weeks
18 ago and read it or skimmed it.

19 THE WITNESS: Not this subject, no, I was mistaken.

20 MR. GOULD: Can I ask him a question?

21 MR. SORKIN: Your Honor, please --

22 THE COURT: Just a moment. Just a moment.

23 THE WITNESS: The reply to this subject.

24 THE COURT: The reply to the subject. What did
25 you mean by that?

gab-15

D'Onofrio-cross

1

THE WITNESS: A memorandum of reply.

2

THE COURT: Whose memorandum?

3

THE WITNESS: Mr. Morvillo's or Mr. Brodsky's.

4

THE COURT: You were shown those?

5

THE WITNESS: I had a copy.

6

THE COURT: You have a copy in your possession now?

7

THE WITNESS: No, I do not.

8

THE COURT: ARE you chewing gum?

9

THE WITNESS: I have a mint in my mouth. I

10

would not have come in --

11

THE COURT: I don't blame you for eating mint, but

12

it is hard to understand you. Let's go back a moment.

13

Are you telling us that some time two or three

14

week ago someone in the U. S. Attorney's office showed you two

15

memorandums --

16

THE WITNESS: No, sir. I brought in my memo from my

17

counsel -- I had a memorandum of agreement with the Government

18

and I brought in my memorandum of agreement, plus a memo

19

and I gave it to the Government.

20

THE COURT: To whom in the Government did you give

21

this?

22

THE WITNESS: To Mr. Sorkin, I believe. I am not

23

sure. Maybe he made note of it at the time. Along with

24

the papers that I gave him as some of those letters from

25

1 gab-16

D'Onofrio-cross

2 Feldshuh and Frank that you just requested about this other
3 case.

4 I said these are in other things I think you may
5 not have.

6 THE COURT: Do I take it it is fair to assume this
7 was some time in late August?

8 THE WITNESS: I think last week or so. I am not
9 sure, ten days, eight days.

10 THE COURT: In any event, late August, maybe even
11 early September?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right.

14 Mr. Sorkin, do you recall this?

15 MR. SORKIN: Your Honor, my only recollection
16 is in turning over documents as late as --

17 THE COURT: No, forget the turning over of the
18 documents. Mr. D'Onofrio says that he turned over to you
19 some papers.

20 MR. SORKIN: I did receive papers from him.
21
22
23
24
25

1 3b pm gwrf 1

D'Onofrio-cross

2 THE COURT: All right. What are those papers?

3 MR. SORKIN: Those are some of the papers I turned
4 over to Mr. Feldshuh at the lunch --

5 THE COURT: This is about as helpful as listening
6 to a banchee wail.

7 MR. FELDSHUH: I don't know of any papers you
8 turned over to me at the lunch break.

9 THE COURT: Please. The pettiness in these
10 deliberations is enough to -- Mr. Sorkin, you can talk
11 to Doonan later. Would you do me the courtesy of listening.
12 You flop around here like a fish with his head half cut
13 off. I want some attention to the problem.

14 What was it that Mr. D'Onofrio turned over to
15 you? Did it include, for example, any memoranda of
16 conversations between Mr. D'Onofrio and Morvillo and/or Ryan
17 and/or Brodsky?

18 MR. GOULD: Or an agreement between him --

19 THE COURT: Or any kind of formal agreement
20 or understanding between Mr. D'Onofrio on the one hand and
21 the United States Attorney's office on the other?

22 MR. SORKIN: Your Honor, I don't recall getting
23 anything from Mr. D'Onofrio in the last week that I hadn't
24 already had. If he gave it to me, I put it away with what
25 else I had.

1 gwrf 2

D'Onofrio-cross

2 THE WITNESS: I didn't give him my agreement with
3 the United States Government. I know that. I gave him some
4 papers I found on Feldshuh & Frank and a green piece of paper.
5 I -- we were busy.

6 THE COURT: There doesn't seem to have been any
7 systematic approach to this problem at all that I can see.

8 MR. GOULD: This is the 3500 material, all of it
9 on this subject.

10 THE COURT: Yes, I know.

11 MR. GOULD: Those two pieces of paper, one of
12 them came in yesterday.

13 THE COURT: I show you a memorandum on the letter-
14 head of the United States Government, apparently a memorandum
15 of Robert Morvillo. It is called in our case for control
16 purposes 3501-HH for identification.

17 THE WITNESS: I think this may be one that I
18 handed him.

19 THE COURT: You handed to Mr. Sorkin?

20 THE WITNESS: Yes.

21 THE COURT: All right.

22 Now I show you a statement, the copy of which I
23 have is not marked for identification, but I believe it is
24 a 3500 exhibit in this case. It is a memorandum headed
25 April 19, 1973, London, England, statement of Ramon N.

1 gwr 3 D'Onofrio-cross

2 D'Onofrio.

3 THE WITNESS: This one I think he already said
4 he had. I didn't turn him over that. I have seen it,
5 yes, sir. My attorney has a copy.

6 THE COURT: All right.

7 MR. SORKIN: For the record, that was turned
8 over under Brady.

9 THE COURT: That clarifies things mightily. At
10 least it was turned over.

11 Mr. Sorkin, apparently there was some statement
12 or contract or agreement or understanding in writing between
13 Mr. D'Onofrio on the one hand and your office on the other.

14 MR. SORKIN: That is correct.

15 THE COURT: Has that been shown?

16 MR. SORKIN: That is it, your Honor. That
17 is the whole thing. This was prepared in the Pentonville jail
18 between --

19 THE COURT: Mr. Sorkin, I am not a worker or a
20 shirker in your office. If you don't stop blowing off
21 at me and everybody else in this case, I'm going to get the
22 United States Attorney and Mr. Edwards up here and tell him
23 flatly that we are going to get somebody to control you.

24 Now, I'm pursuing an inquiry which is not an ideal
25 one. I suggest to you that your first responsibility as

1 gwrf 4

D'Onofrio-cross

2 a human being and a lawyer is to control your temper which
3 I find continually offensive and crippling, if I may say
4 so, to you.

5 No one is accusing you, at least I'm not
6 accusing you of anything. I am entitled and indeed obligated
7 to inquire. If you don't understand that, I will get
8 someone up here to see to it that we get somebody in on
9 this case who does understand that.

10 MR. SORKIN: I do understand, your Honor. I'm
11 sorry.

12 THE COURT: All right.

13 I know your intentions are good, but you blow
14 off like a skyrocket at the least provocation.

15 Now, I repeat. The only agreement or understanding,
16 therefore, is this document which I just described and which
17 Gould described a moment ago headed London, England, April
18 19, 1973.

19 MR. SORKIN: Yes, your Honor.

20 THE COURT: All right.

21 Is there any further question, Mr. Gould, that you
22 would like to pose or like to have me pose on this subject?

23 MR. GOULD: Yes, sir. I would like the witness
24 to testify that when he said he turned over an agreement
25 to them two or three weeks ago, whether he meant this paper,

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D'Onofrio-cross

2 April 19, 1973.

3 THE WITNESS: No, I did not mean that, sir.

4 THE COURT: What do you mean, however, you turned
5 over a copy of the October --

6 THE WITNESS: He said he already had a copy of that,
7 Mr. Sorkin, if I recall. I said, "You may not have a copy
8 of this, Mr. Sorkin, but here. Here are some letters from
9 Feldshuh & Frank and some other stuff that may or may not
10 pertain to the trial."

11 I did not turn that agreement over.

12 MR. GOULD: All right. I would like him to tell
13 us what agreement he characterized earlier in response
14 to your Honor's question as a reply memorandum.

15 THE COURT: Yes. I would like to know that, too.
16 What do you mean by this phrase you used, "reply
17 memorandum"?

18 THE WITNESS: I meant -- I was going to point to
19 it.

20 MR. GOULD: Which?

21 THE WITNESS: I meant the memorandum.

22 MR. GOULD: This one?

23 THE WITNESS: Yes, sir.

24 MR. GOULD: Are you telling his Honor that you
25 had a copy of this memorandum?

1 gwrf 6

D'Onofrio-cross

2 THE WITNESS: Yes, I had a copy from my lawyer.

3 THE COURT: Who is your lawyer?

4 THE WITNESS: Murray Mogel. He got it from me
5 from Mr. Brodsky last year.

6 THE COURT: I see.

7 MR. GOULD: Are you saying that you turned a
8 copy of this over to Mr. Sorkin?

9 THE WITNESS: They had it.

10 MR. GOULD: Just answer me, will you?

11 THE WITNESS: Yes, sir.

12 MR. GOULD: When?

13 THE WITNESS: Along with a group of other papers
14 about a week ago.

15 MR. GOULD: Who was present when you did that?

16 THE WITNESS: Just he and I.

17 MR. GOULD: Your Honor will have to deal with
18 the professional implications of that, not I.

19 MR. SORKIN: Your Honor -- I'm sorry.

20 THE COURT: I must say I don't understand it.

21 Do you wish to ask any questions of Mr. Doonan
22 on this subject?

23 MR. GOULD: Were you present, Mr. Doonan, when
24 this memorandum, 3501-HH was turned over by D'Onofrio?

25 MR. DOONAN: Can I see it?

1 gwrf 7

D'Onofrio-cross

2 MR. GOULD: Yes, sir.

3 MR. DOONAN: You are referring to this being
4 turned over a week or three weeks ago?

5 MR. GOULD: Yes.

6 MR. DOONAN: No, I don't recall seeing this copy.

7 MR. GOULD: May I ask you another question.

8 Did you have a conversation with Mr. Sorkin
9 about this memorandum within the last few days?

10 MR. DOONAN: No, I did not.

11 MR. GOULD: That is all.

12 THE COURT: Thank you very much, Mr. D'Onofrio.
13 Why don't you go in and relax while you can, and the same
14 to you, Mr. Doonan. Thank you.

15 (Mr. D'Onofrio and Mr. Doonan left the robing room.)

16 THE COURT: Mr. Gould, I'm sorry, I wish you would
17 enlighten me. What steps do you think this Court should
18 take?

19 MR. GOULD: I don't know. I don't know. I think
20 your Honor is in the presence of an utter misstatement,
21 misrepresentation by Mr. Sorkin to the Court as to the
22 handling of this memorandum. I'm very suspicious about
23 what happened. I don't know. Mr. Sorkin told your Honor
24 a few moments ago in explanation of the tardy delivery of
25 HH, 3501-HH, that it turned up. He had a conversation

1 gwrf 8

2 with Doonan. Doonan said or he said to Doonan, "Let's
3 give it to him," and one of them is telling a lie.

4 THE COURT: I don't think I can necessarily conclude
5 he was telling a lie, but I must say I'm a little bit
6 shaken about the rather cavalier method in which all of this
7 was treated.

8 MR. GOULD: If Sorkin is right, he discussed the
9 memo with Doonan. If Doonan is right, he didn't discuss
10 the memo with Sorkin. One of them is not telling the truth.

11 MR. SORKIN: May I be heard, your Honor?

12 THE COURT: Yes.

13 MR. SORKIN: Mr. Doonan has been running around
14 in this case. He flew into my office. I think I asked him
15 had he ever seen this. He said, "Yes." He flew out.

16 I said, "Do you think this is 3500?"

17 I think I may have even discussed it with Mr.
18 Flannery but I think Mr. Flannery was the one who Xeroxed
19 it for me. We said we better turn it over. I knew of its
20 existence. I knew of its existence in the Eastern District
21 because it became a public document there and I --

22 THE COURT: I don't follow that. I don't see how
23 you could assume that it was a public document, first of
24 all.

25 Second of all, even if you could and did, I think

1 gwrf 9

2 it was a little bit cavalier not to turn it over in any event.

3 I must say to that extent I share Mr. Gould's
4 and anybody else's concern. It makes one very, very queasy
5 as to whether or not we are complying with the statute and
6 with the commands of the Court so far as the discovery
7 is concerned.

8 I really must say I'm badly upset about this. I'm
9 not going to condemn you or Mr. Doonan for being a liar or
10 anything like that. I don't think that is necessary or indeed
11 even certain. I do think from your own lips that you have
12 been very casual about a very important subject.

13 MR. SORKIN: Your Honor, I turned over -- I must
14 respectfully disagree. I turned over to Mr. Gould and
15 to all counsel in this case 3500 material on Mr. D'Onofrio
16 that runs to over 35 documents.

17 THE COURT: No, no one questions that.

18 MR. SORKIN: May I please respond.

19 THE COURT: You seem not to see the point yet.
20 The point is that you apparently were almost iwlling to
21 withhold something on the theory it was "a public document,"
22 because of the results of the Pfingst case before a jury
23 and I think it was Judge Weinstein in our sister court
24 across the river. That is what disturbs me. I don't
25 like that kind of assumptions.

1 gwrf 10

2 MR. SORKIN: I'm sorry if that is the kind of
3 impression it conveyed.

4 THE COURT: That is what you told us.

5 MR. SORKIN: I'm sorry. I did not -- when I
6 reviewed my records for the last time this weekend to make
7 sure that I turned over all 3500, I determined at the last
8 moment that this probably should be turned over and I turned
9 it over.

10 MR. GOULD: In conference with Doonan, who says
11 it didn't happen.

12 MR. SORKIN: It wasn't in conference.

13 MR. GOULD: That is your words.

14 MR. SORKIN: No, it wasn't.

15 THE COURT: All right. We will close the subject.
16 We will return to Mr. Feldshuh's problems on 3500 material.

17 Now, I have read this letter by somebody named
18 Derfner who apparently --

19 MR. FELDSHUH: He is right next to you.

20 THE COURT: Yes, that is right. You are right
21 here.

22 Mr. Derfner has written all kinds of great things
23 which sound fine, but they look to me as though they are an
24 effort to create an issue for later on if need be more than
25 any justifiable search at a late date for records which

1 gwrf 11

2 the Defendant Frank claimed were missing. Be that as it may,
3 I may be unfairly reading and characterizing this.

4 However, I also have read the reply of Mr. Sorkin
5 to Mr. Derfner's letter. Sorkin's reply is dated September
6 9th. I find that that is reasonably self-explanatory
7 except for one thing:

8 On page 2 of his letter of August 30th Mr.
9 Derfner asks questions regarding James Feeney. Subdivision
10 or subquestion B under II reads as follows:

11 "Any and all information known to the Government
12 involving James W. Feeney's obtaining fraudulent letters
13 of credit."

14 Now, when I turn to page 2 of the Sorkin reply,
15 September 9th, I find this puzzling statement with respect
16 to B II:

17 "Please be advised that Mr. Feeney has not been
18 indicted on any cases other than indictment 73 Cr. 471 and
19 73 Cr. 747."

20 Now, here I must say that that doesn't seem to
21 be responsive to the inquiry.

22 Other than that, I would think there is no
23 real problem. But you tell me, Mr. Feldshuh. We seem to
24 spend more time litigating anything in this case other
25 than the facts.

1 gwrf 12

2 MR. DERFNER: Perhaps I could better respond,
3 your Honor.

4 THE COURT: Your partner raised this. I think in
5 fairness he better follow through.

6 MR. FELDSHUH: Your Honor, the one issue that I
7 must address myself so that --

8 THE COURT: Please do. I'm inviting you to.

9 MR. FELDSHUH: I must talk about that stock list.
10 That is the thing I want.

11 THE COURT: You want what?

12 MR. FELDSHUH: A list of people who D'Onofrio
13 made up with respect to those outside of D'Onofrio and these
14 alleged cohorts who were going to take down the remainder
15 of the stock off TWP. You recall he testified about the
16 fact.--

17 THE COURT: Wait just a minute.

18 In other words, you claim that the Government
19 has in its possession a list prepared by D'Onofrio of
20 certain persons who were going to take down the Training
21 With The Pros stock?

22 MR. FELDSHUH: Right.

23 THE COURT: Do you have such a document?

24 MR. SORKIN: I do, your Honor. I showed it to
25 Mr. Derfner in discovery, and the position the Government

1 gwrf 13

2 took was that it was not 3500 material. I have it in the
3 Court. That was our position.

4 THE COURT: Do we need to quibble at this date
5 as to whether it fits under Brady or 3500 or whatever?
6 What is the point? You gave him discovery of it. Why not
7 let him see it now?

8 MR. SORKIN: I'll be happy to turn it over to him
9 now.

10 THE COURT: Is there any prejudice to the United
11 States? I see none. What is the point of a controversy
12 like this?

13 MR. SORKIN: I will turn it over to them now.

14 THE COURT: Mr. Feldshuh, we have relief for you
15 on this. Does that accommodate you?

16 MR. FELDSHUH: One more item, your Honor.

17 THE COURT: Yes, sir.

18 MR. FELDSHUH: A summary sheet of Barbin purchasers
19 of TWP stock.

20 THE COURT: Is there such a document?

21 MR. SORKIN: Yes, your Honor. There is a
22 summary. It was prepared by Mr. Bonavia. It is not a
23 bank record. It is his own personal record. It was mixed
24 in with the Barbin files. I gave them every Barbin record
25 which was a bank record and which complied with your Honor's

1 gwr 14

2 order.

3 THE COURT: D'Onofrio had nothing to do so far as
4 we know in preparing this document?

5 MR. SORKIN: Absolutely not. Nobody in the case
6 had anything to do with this except Bonavia.

7 THE COURT: Bonavia is going to be here.

8 MR. SORKIN: That is correct.

9 THE COURT: Prior to Bonavia's appearance as
10 a witness, I would certainly agree with the defense, they
11 ought to have this. He prepared it apparently for use
12 with our friend Ramon D'Onofrio. I would agree with Mr.
13 Sorkin --

14 MR. FELDSHUH: Except one point, your Honor. We
15 want to save time. Your Honor indicated that we should
16 get up 3500 material and perhaps other material --

17 THE COURT: I already ruled on that.

18 MR. FELDSHUH: Why can't we get it in advance?
19 What harm --

20 THE COURT: He will give it in advance. He's
21 going to comply I must assume with the Court's direction
22 generally on that subject.

23 MR. FELDSHUH: Except of course, your Honor, when
24 your Honor says give it in advance, we get stuff Monday
25 morning.

1 gwrfl 15

2 THE COURT: Mr. Feldshuh, I regret that. I hope
3 and trust that Mr. Sorkin regrets that episode. I have
4 been around too long not to know that this happens with
5 fair frequency in the best of houses. I know that I
6 misplace documents. I suppose I shouldn't admit that.
7 This will be read against me in some tribunal or place some-
8 where later, but the fact is it is true and I have no hesi-
9 tation in telling you I make mistakes.

10 I judge that none of you do except maybe Mr.
11 Sorkin, but be that as it may, that is over with. I regret
12 it, you regret it, Mr. Gould regrets it.

13 I agree with you, you and Mr. Derfner are going
14 to get the other document right now. You heard that. Let
15 us call back our jury.

16 MR. GOULD: One request, your Honor, a very
17 unusual one. I'm going to ask the Court to direct the
18 United States Attorney and Mr. Doonan and a gentleman of
19 the United States Attorney's office not to confer with Mr.
20 D'Onofrio until cross examination is completed. I think it
21 is a reasonable request in the light of what has happened.

22 THE COURT: I don't consider it unusual myself.
23 I have encountered this.

24 MR. GOULD: It is unusual for me.

25 THE COURT: That may be.

1 gwrf 16

2 MR. GOULD: I don't frequently experience what I'm
3 experiencing right now about this case.

4 THE COURT: I don't know quite what you mean
5 by that. Your request to me is presumptively reasonable.
6 I know it has been done on other cases. Before I do it,
7 do you see any reason that you want to object to this?

8 MR. SORKIN: Absolutely not, your Honor. In
9 fact, we refused to talk to Mr. D'Onofrio at lunch other
10 than to order him a sandwich.

11 THE COURT: May I suggest that this direction
12 carries not only to you but it carries to Doonan, and, as
13 Mr. Gould asked, any other representative of the United
14 States Government.

15 MR. SORKIN: Are we permitted to tell him where
16 to return to, your Honor?

17 THE COURT: Of course, but not to discuss this
18 testimony.

19 MR. SORKIN: Very well.

20 THE COURT: On direct or cross. Right, Mr. Gould?

21 MR. GOULD: That is right.

22 THE COURT: Fair enough.

23 MR. GOULD: Thank you very much.

24 MR. FELDSHUH: Thank you, sir.

25

(In open court, jury present.)

BY MR. GOULD:

Q Mr. D'Onofrio, I understood you to say in response to one of my questions before, that you had delivered a agreement to the Government.

A A memorandum and some other documents.

Q With respect to the memorandum, would you be good enough to tell us what that memorandum was that you delivered?

A It was a memorandum that my attorney had given to me that he had gotten from Mr. Brodsky last year, plus some other documents.

MR. GOULD: Would you please mark this document as Defendant's Exhibit A?

THE WITNESS: That is not the one -- I'm sorry.

(Defendant Stoller's Exhibit A marked for identification.)

Q I show you this document marked as Defendant Stoller's Exhibit A for identification and I ask you if that is the document that you delivered to the United States Attorney?

A No.

Q Thank you.

I show you this document, which has been marked

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D'Onofrio-cross

445

as Exhibit 3501-HH in this case and I ask you if that is
the document that you delivered to the United States
Attorney's office?

A That, or a copy of it.

Q Where did you get that document?

A From my attorney.

Q What is the name of your attorney?

A Murray Mogel.

Q Where is his office?

A He is a public defender.

Q In the City of New York?

A For this district.

Q And it is your testimony here today, and I would
ask you please to be extremely careful about your response,
that having looked at the document 3501-HH that that
document was delivered to you by your attorney within the
last two or three weeks and delivered by you to the
office of the United States Attorney within the last two
or three weeks?

A No, sir, no. This was delivered to my attorney
last year -- he delivered it to me.

Q And he gave it to you last year?

A Yes, sir.

Q And in the last couple of weeks you gave your

2 copy to the United States Attorney?

3 A Yes, sir.

4 Q Would you be good enough to tell us to whom in
5 the office of the United States Attorney you delivered
6 that document?

7 A To Mr. Sorkin.

8 Q Personally, you and Mr. Sorkin?

9 A Yes, sir.

10 Q Was anybody else present?

11 A No, sir.

12 Q Was Mr. Doonan present?

13 A No, sir.

14 Q Have you discussed this document with Mr.
15 Sorkin during the last week or two?

16 A No, sir.

17 Q Has any reference been made to it in any conversa-
18 tion you have had either with Mr. Sorkin or with any
19 other representative of the United States Government in the
20 last couple of weeks?

21 A Yes, I believe there was, sir.

22 Q Now, would you be good enough to tell us whether --

23 A No, I recall --

24 Q Good. When, where and with whom?

25 A I believe discussing the document that they

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D'Onofrio-cross

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mentioned they would need it for Brady or Maryland
or something like that, some sort of case.

Q Who said that to you?

A I believe Mr. Sorkin, or I said it to him.

Q You were telling him what he may need as Brady
material?

A Yes.

Q You were advising him on that subject?

A No, but I had been through a courtroom before
and I felt maybe I had a document they didn't have.

Q When you gave it to him you said to Sorkin,
"Do you have this document?"

A I don't remember if I said that.

Q Tell us what you remember.

A I gave him a bunch of other documents with it
and we perused over other documents also. I don't
remember the discussion on that document.

Q You just told us you discussed the document?

A Yes.

Q You remember using the words Brady or Maryland
or something like that?

A Yes, sir.

MR. SORKIN: I object. I fail to see the
relevance of this document in connection with Mr. D'Onofrio's

2 cross examination.

3 THE COURT: In any event, you objected after
4 it was all over, I believe, so we will let it stand.

5 Q All I want to know is what you and he discussed
6 about this document. I want your best recollection.

7 A I said --

8 Q I withdraw that. Bear with me, please.

9 We have it clear that within the last two or
10 three weeks, you had a conversation with Mr. Sorkin about
11 this document, 3501-HH.

12 A Or a copy of it.

13 Q Or a copy of it.

14 A Yes, sir.

15 Q And now all I am asking you to do is to tell
16 his Honor and the jury what you discussed about that
17 document.

18 A I said, "Mr. Sorkin" -- it was a general discussion
19 with other documents and --

20 Q Just this document.

21 A I said, "Here are some documents that you may
22 need subject to Brady versus Maryland or Maryland versus
23 Brady that I have that maybe you do not have," and with
24 it were 3, 4, 5 or 6 documents, and that was one of them.

25 Q What did he say, if anything?

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D'Onofrio-cross

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A He put them to the side of his desk and we went on with the rest of our work.

Q And he didn't say anything about this document?

A No, sir.

Q And between then and now you have not discussed this document?

A Not since that time, no, sir.

Q Did you read the document?

A Oh, I read it last year very clearly.

Q And when you handed it to him --

MR. SORKIN: I must object. This document is not in evidence, no one knows what Mr. Gould is talking about.

MR. GOULD: I offer it in evidence.

MR. SORKIN: Your Honor, I must object to it going into evidence. Mr. D'Onofrio testified about the substance of the memo before and I think it is irrelevant.

THE COURT: It will be marked Stoller Exhibit B.

(Defendant Stoller's Exhibit B marked for identification.)

(Pause.)

THE COURT: No, I disagree. I think it is perhaps relevant on the issue of credibility, which I assume it is being offered for, and I will let the jury

xx

1 decide that. It is received.

2 (Defendant Stoller's Exhibit B received
3 in evidence.)

4
5 MR. GOULD: May I have your Honor's indulgence
6 to read this exhibit to the jury?

7 THE COURT: All right.

8 MR. GOULD: Ladies and gentlemen of the
9 jury, this is a Xerox copy of a memorandum.

10 (Mr. Gould reads to the jury from Defendant
11 Stoller's Exhibit B in evidence.)

12 MR. SORKIN: Your Honor, I would ask Mr. Gould
13 just to read it without paraphrasing or --

14 MR. GOULD: I have not paraphrased and I think
15 it is only fair, your Honor, when it says "3" --

16 THE COURT: Go ahead.

17 MR. GOULD: I can understand a certain boredom
18 with it.

19 (Mr. Gould continues reading to jury from
20 Defendant Stoller's Exhibit B in evidence.)

21 Q After you told Mr. Morvillo that this deal
22 that he was offering you was not satisfactory, did you
23 call him again?

24 A I don't recall if I called him again.

25 Q Did you call anybody at the United States

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D'Onofrio-cross

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Attorney's office again?

A Not until after I was captured, I don't believe, sir.

Q Did you write them any letters?

A I may have written them some letters. I am not sure. I don't recall.

Q You have no recollection at all of any letters --

A Yes, I think I may have written David Brodsky a letter that I am still willing to negotiate, or something of that nature, but I don't recall the contents.

MR. GOULD: Would your Honor permit me to ask Mr. Sorkin to produce such a letter?

MR. SORKIN: Your Honor, I can only say that such a letter was turned over under the appropriate statute.

THE COURT: Do you have such a letter, to your knowledge?

MR. SORKIN: I have such a letter, your Honor. I will have to look for it.

(Pause.)

MR. GOULD: I think I understand the confusion and maybe I can straighten it out. I withdraw my request, with the right to renew it if I am in error about what I do have.

THE COURT: All right.

1
2 Q I show you this document, sir, which is marked
3 3501-S. Is that the letter you wrote to Mr. Brodsky?

4 A You said after that date?

5 Q Yes.

6 A This was before that date.

7 Q So that is not the letter?

8 A Obviously not.

9 Q Good.

10 MR. SORKIN: Did you S or X?

11 MR. GOULD: I said S.

12 MR. SORKIN: If Mr. Gould would look at 3501-V,
13 I think he would find such a letter, dated September
14 18, 1972.

15 (Pause.)

16 MR. GOULD: I have a paper which is marked V,
17 but it says "Dear Joe" and Joe is not Brodsky.

18 MR. SORKIN: His messenger picked up V five
19 days ago. There is V, Mr. Gould.

20 (Handing.)

21 You should have it. It was turned over.

22 MR. GOULD: Now we are all straightened out.

23 Q All right, Mr. D'Onofrio, I am all straightened
24 out, and I am sorry I got you confused.

25 I take it now that before you had this conversation

2 with Morvillo, which is the subject of this memorandum
3 I have just read, before that, you did write to Brodsky,
4 correct?

5 A Not in fullness, correct, no, sir.

6 Q Not what?

7 A Not in fullness. It is not complete, your
8 question.

9 Q You did write him a letter?

10 A He got a copy of a letter that I wrote to
11 many people -- yes, I wrote a convering letter to him too.
12 He got a covering letter along with the letter I wrote
13 to others. So you are correct, he did get a letter,
14 plus others.

15 THE COURT: May I suggest that we suspend here
16 and maybe we can get this together to start with tomorrow
17 morning?

18 MR. GOULD: I mixed up the letters, your Honor.

19 THE COURT: I wonder if we could suspend
20 now, as far as you are concerned?

21 MR. GOULD: Certainly.

22 THE COURT: Before we disband for the evening,
23 ladies and gentlemen of the jury, it has occurred to me
24 that next week, beginning, I believe, at sundown on
25 Monday, the 16th, there will be religious holidays, and

1 I understand that some people like to observe them that
2 evening and Tuesday, some others would like to observe
3 both Tuesday and Wednesday. I am told that some of
4 the parties and the lawyers in this case would fall into
5 the latter category.
6

7 Let me ask, is there any one of you on the jury
8 that would like to observe the religious holidays next
9 week?

10 (Show of hands.)

11 THE COURT: Two of you. Is it your preference
12 to observe both Tuesday and Wednesday?

13 JUROR NO. 6: Both days.

14 THE COURT: I think we should plan for the
15 benefit of all of you on the jury and among the lawyers
16 and the parties that we will not sit on Tuesday and Wednesday
17 in view of the observance of the religious holidays by
18 a number of you in both the jury and among counsel and
19 the parties. So all plan accordingly.

20 MR. GOULD: Does that affect your Honor's
21 treatment of Friday?

22 THE COURT: I am more or less locked in on
23 Fridays, at least I am next week, as far as I know. If
24 there is any change, I will advise you.

25 MR. GOULD : I would implore your Honor not
to sit the following Friday because I have really made a

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D'Onofrio-cross

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very substantial commitment.

THE COURT: I believe I am committed all day for other cases on Friday of next week, but I will check into it. If there is any change, I will let you and everyone else know. I will say good evening, ladies and gentlemen, we will resume tomorrow again at 10:00 o'clock.

(Adjourned to Wednesday, September 11, 1974, at 10:00 a.m.

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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EXHIBIT INDEX

<u>Defendant</u>	<u>Identification</u>	<u>In Evidence</u>
<u>Stoller</u>		
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1 rmrf

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2 United States of America

3 vs

4 Philip Stoller and Martin Frank

5 New York, New York

6 September 11, 1974-10:00 a.m.

7 (Trial resumed.)

8 (In the robing room.)

9 THE COURT: Now, somebody has, as usual, a
10 morning problem. I think it is you, Mr. Sorkin?

11 MR. SORKIN: It is not really a problem, your
12 Honor. There are two things. Number one, I want to
13 sincerely apologize to the Court on the record for raising
14 my voice yesterday. I know the record won't reflect that
15 but I want to say now I am sorry and I will see that it
16 doesn't happen again.

17 THE COURT: I accept the apology and the reason
18 I clamped down was that I think not that you intended this,
19 but it gets awfully troublesom particularly when it
20 happens in front of the jury.

21 MR. SORKIN: The second thing, your Honor, is
22 the question of 3501-HH. My recollection, and it still
23 is my recollection, the Pentonville agreement which is
24 the second memo Mr. Gould had was turned over some time
25 ago I think in the Government's second bill of particulars.

With respect to 3501-HH I recall talking to

1 Mr. Doonan but Mr. Flannery tells me it was he I talked
2 to about it. Mr. Flannery remembers a conversation, I
3 remember saying words about the memo, Mr. Flannery remembers
4 it was he I spoke to, and my recollection is, and I still
5 thought it was Doonan and I still think it was Doonan,
6 that although I had knowledge of that memo some time ago
7 I was of the view that it was in the Eastern District, it
8 was a matter of public record, I thought all defense counsel
9 had it.
10

11 It was brought to my attention again by Mr.
12 D'Onofrio and I looked at the memo again, either late
13 last week, but Mr. Flannery tells me it was this past
14 weekend, and I used some rather -- I used an expletive
15 deleted and said, in substance, "Give it to him."

16 At that point I gave it to Mr. Flannery and he
17 Xeroxed it, marked it as a 3500 exhibit and we turned it
18 over Monday morning.

19 I wanted to bring that to the Court's attention
20 because I was sincerely troubled by the implication
21 yesterday of what happened. It was turned over to defense
22 counsel as 3500 material a day and a half before Mr.
23 D'Onofrio started his cross and I thought there was
24 no prejudice to anyone.

25 I am sorry about that.

1
2 THE COURT: Anybody want to say anything on this
3 point further?

4 MR. GOULD: I am not being asked for my opinion?

5 THE COURT: Anybody can say anything they want.

6 MR. GOULD: I see no occasion to volunteer any
7 observation.

8 MR. FELDSHUH: Your Honor, I think that the giving
9 of 3500 material and the whole discovery procedure here has
10 been hampered and hampered to an adverse effect upon the
11 defendants. I now take this occasion to ask Mr. Sorkin
12 to please go through all of his material again and make
13 sure we have gotten all the 3500 material to which we
14 are entitled and so we are not caught by surprise again.

15 THE COURT: If I may say so, Mr. Feldshuh,
16 that may be your view and I will accept it sincerely, but
17 to me it is unimpressive because it is nothing but an
18 after the fact carbon copy of something we went through
19 several times recently and I don't think we have to say
20 more. If this man doesn't know his responsibility now, that
21 is his problem.

22 Even though we live in a world where it is
23 put otherwise later, he better know it now and I have to
24 accept that he does.

25 Off the record.

(Discussion off the record.)

(In open court, jury present.)

THE COURT: Good morning, ladies and gentlemen.

(Defendant Stoller Exhibit C marked for
identification.)

RAMON N. D'ONOFRIO, resumed
the stand and testified further as follows:

CROSS EXAMINATION

BY MR. GOULD (Continued):

Q Mr. D'Onofrio, what time did you leave the building here last night?

A About a quarter of 5:00.

Q You left the courtroom at 4:15?

A I believe so, sir, and I --

Q Just answer my questions, please.

A Yes, sir.

Q What did you do in the intervening half hour?

A I went upstairs to get my briefcase in the outer-office of the secretary of Mr. Sorkin's office. That is where I leave my briefcase.

Q Upstairs?

A Excuse me, downstairs.

Q You went down in the elevator with Mr. Sorkin and Mr. Doonan?

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D'Onofrio-cross

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A And yourself.

Q And got off on the fourth floor?

A Third floor, sir.

Q Did you discuss anything with them?

A No, sir.

Q Anybody say anything to you last night?

A No, sir.

Q It took you half an hour to get your briefcase?

A No, sir. I sat there and was waiting to ask a question and Mr. Sorkin says, "I don't want you to speak to me about anything about this case or anything else.

"Have you gotten your briefcase?"

I said, "I want permission to go into the office together."

He said to go and get it and go home.

Q You waited a half hour to get your briefcase?

A I couldn't go into the office without permission.

Q You waited half an hour --

A Maybe 25 minutes I sat there.

Q Now, Mr. D'Onofrio --

A I also went to the bathroom.

Q I understood you to tell us that your cooperation, as you called it, with the Government began in 1970, is that correct?

2 A I believe so, that is correct. That is what I
3 told you, yes.

4 Q Prior to 1970 had you done any work for the United
5 States Government in any capacity whatever?

6 A I am a little mixed up on my years, but I believe
7 I may have worked in some capacity for the United States
8 Government in '69, but I am not sure.

9 Q In what capacity?

10 A It is either '69 or '70, I am not sure of the
11 dates, but what I am referring to or what you are referring
12 to, I don't know, is I worked with the Federal Bureau of
13 Investigation. Is that what you are referring to, sir?

14 Q Mr. D'Onofrio, please don't ask me questions.
15 You are sure, however, that it was '69 or '70?

16 A No, I said I am not sure.

17 Q Could it have been '66?

18 A No, it could not be '66.

19 Q Could it be '67?

20 A No.

21 Q Could it have been '68?

22 A No.

23 Q Could it have been '69?

24 A It could have been, yes, sir.

25 Q 1969 was the year in which you were engaged

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D'Onofrio-cross

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in these many manipulative activities to which you have testified?

A That is correct.

Q And in what other activities were you engaged in 1969?

A Business activities with D'Onofrio, Kirschenbaum & Company, as I told you before, business activities with my overseas branch, the formation of some mutual funds, it is Amitalia Funds which you talked to me about, the Australian Pacific Fund, a merger and acquisition fund, worldwide activity and also as you just questioned me about, some activities with the Federal Bureau of Investigation.

Q So we have it, then, that in 1969 in addition to your business activities which were pretty active -- you were a very busy fellow in 1969?

A What was the question?

Q You were a very busy man in 1969?

A Yes, I was a very busy man.

Q And you found time, however, to do some work for the FBI, is that correct?

A That is correct.

Q Were you an employee of the Federal Bureau of Investigation?

A No, sir.

Q What were you?

A It is very hard to evaluate, but I imagine in layman's language I did some informant and undercover activity for them.

Q Would it be fair to say that you were an informer for the FBI --

A That would be fair, sir, surely.

Q All the time that you were doing these other things that you described, you were acting as an informer for the FBI, correct?

A In other areas.

Q In areas other than this work?

A Other than securities.

Q Did you do that voluntarily? In other words, did you offer your services to them or did they ask you to furnish your services?

A I believe that I offered my services to them.

Q Why did you do that, sir?

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2 D'Onofrio-cross

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A Because I had come across an area involved in stolen securities and treasury bonds which was completely out of my format of criminal, and I didn't know whether I was being duped at the time or not duped and I visited with the FBI, and at the visit with the FBI they asked me if I could further help them in recovery of some 13 million dollars in stolen treasury bonds.

Q Is it not the fact, sir, that you were engaged or you were approached to do something with respect to Government bonds and that you went to the FBI and told them about it?

A No, sir.

Q How did you find out about these Government bonds?

A I found out through someone trying to sell them to me for disposition of them in Switzerland. When you travel back and forth from Switzerland, you are considered some sort of an international courier of some sort. People think you are capable of disposing of stolen securities, stolen bonds and things of that nature.

Q Other than this activity of informing the FBI about these approaches which had been made to you about the Government bonds in 1969, did you do any other work for the United States Government, any branch of it?

A Well, they asked me to intercede at one point

to find if I have come across any stolen bullion from Kennedy Airport, and to put out my feelers for such.

Q Your what?

A To put out my feelers.

Q Put out your feelers?

A Yes, to feel for it, yes.

Q I see.

A And I don't think I succeeded in that area.

Q So you did some undercover work for them there?

A And in the stolen treasury notes, yes, sir.

Q With people you knew, these feelers meant connections that you had, isn't that right?

A Not connections, total strangers. They came to me.

Q What were you, a decoy of some kind?

A I don't know. I thought at first I was. That is why I went to the FBI.

Q Come back to my question.

A Yes, sir.

Q We have it now that the first time you ever worked for the United States Government was 1969 and that the work you did for them was to do this informing work for the FBI and try to do something for them at Kennedy Airport, put out feelers for them, is that correct?

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D'Onofrio-cross

467

A Correct.

Q Did there not come a time when you worked for the CIA, the Central Intelligence Organization?

A No, sir.

Q Never had anything to do with them?

A No, sir.

Q Would you take a look at this document, sir, which is marked Defendant Stoller's Exhibit C.

Did you write that piece of paper?

A Yes, sir.

Q That is your piece of paper?

A Yes, sir.

Q Thank you very much.

Would you give it back to me now.

Now, sir, in this piece of paper -- you remember writing it, don't you?

A Oh, yes, sir.

Q In this piece of paper you describe, do you not, some work that you did for the CIA?

A I don't think I describe any work that I did for the CIA, sir. I mention --

Q Let me see. Let's see what you describe and we will just see how accurate it is.

This letter, by the way, and I just asked you to

1 identify it now, is a letter that you wrote to Mr.
2 Brodsky of the office of the United States Attorney, Mr.
3 Sorkin's predecessor, on September 18, 1972?
4

5 A Yes, that is the letter you referred to yesterday.

6 Q Is it a truthful letter?

7 A Not entirely, no.

8 Q You mean it has got some lies in it?

9 A It has got a couple of innuendos.

10 Q Well, how about plain old ordinary lies?

11 A Oh, yes, there are some lies in it, yes.

12 Q How about plain old ordinary fantasies about things
13 that never happened, does it have any of that in it?

14 A I don't think there are fantasies, sir.

15 Q Did there ever come a time, sir, when you went
16 down to Washington and you were introduced to a team of
17 four people of which you were number three, a team of CIA
18 people, and given a job to do, to set up facilities
19 in a foreign country?

20 A Yes, I found out it was a sham later. It was not
21 a CIA activity.

22 Q It was not a CIA activity?

23 A No, s'r.

24 Q You mean you found it out after you wrote this
25 letter?

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D'Onofrio-cross

469

A Yes, sir.

Q Did you go to Washington and talk to anybody in the CIA?

A No, sir. But I found out through Government officials in the country that it was -- that that was not a CIA activity.

Q It was not?

A No, sir.

Q Did you meet a young lady named Gail --

A Yes, sir.

Q -- who had been with the British Intelligence people?

A Yes, sir.

Q And did you go with Gail to a certain airport?

A Are you talking about Lusaka, Zambia?

Q Yes.

Did you go there with her?

A No, sir.

Q Didn't you write Mr. Brodsky and tell him that you did?

A Yes, sir.

Q That was a lie, wasn't it?

A Yes, sir.

Q That was a fantasy that never happened?

A No, it was a lie.

2 Q You made it up?

3 A If it is a lie, it is made up, that's true.

4 Q That's right. You put in this letter a lie in
5 which you said that you went to an airport with this girl
6 Gail, who had formerly been with British Intelligence and
7 who you thought was with the CIA, isn't that what you told
8 him?

9 A She was with British Intelligence, CIA, but I
10 did not go to the airport.

11 Q You didn't go but you said you went?

12 A That's correct, sir.

13 Q Then you said upon --

14 MR. GOULD: Are you going to object that this
15 is not in evidence, because I will put it in evidence. You
16 have a perfectly valid objection.

17 MR. SORKIN: I realize that, your Honor. I
18 see at this point there is no reason. I think Mr. Gould
19 is doing fine and I won't.

20 MR. GOULD: Thank you very much. I just
21 don't want to transgress any of these delicate rules.

22 Q Did you write a letter to Mr. Brodsky in which you
23 said upon landing at the airport the four of us are told,
24 were told, that the chief of the secret police had met with
25 a terrible accident and was being buried the following day?

gab0-2

D'Onofrio-cross

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A That was true, sir.

3

Q Did you go to the airport?

4

A Yes, sir.

5

Q Where?

6

A In Lusaka, Zambia.

7

Q You did go to the airport?

8

A Yes, sir.

9

Q Didn't you just tell us that you didn't go to the

10 airport?

11

A I didn't know what you were referring to.

12

Q Now you know?

13

A Now I remember, sir.

14

Q Now you remember going to Zambia?

15

A Oh, yes, sir.

16

Q But a few minutes ago you told us you didn't go

17 to Zambia?

18

A I did not say that.

19

MR. SORKIN: He did not say that. He did mention

20

Zambia.

21

MR. GOULD: All right, it's the jury's recollection .

22

A I said Lusaka, which is in Zambia, the capital.

23

Q You did go then? You did go to Zambia?

24

A Yes, sir.

25

Q And when you got to the airport -- when was this,

1 by the way? I want --

2
3 A '69.

4 Q The month, the month.

5 A I don't recall, sir.

6 Q It was a te-rible experience you had there, wasn't
7 it?

8 A No, it wasn't a terrible experience for me.

9 Q Wasn't it anything that stuck in your mind?

10 A Well, if I were given about four or five days to
11 think about it, I think I could write you up a story on it.

12 Q I am sure you could write us up - story about it,
13 sir. What I want to know is, nothing unpleasant happened to
14 you in Zambia that you remember?

15 A I don't recall, sir.

16 Q You remember nothing about what happened there?

17 A I don't recall, sir.

18 Q Let me see if I can refresh your recollection.

19 A Please do.

20 Q Didn't you say that a couple of days after you
21 arrived -t the airport --

22 MR. SORKIN: Your Honor, now I will object.
23 I think if Mr. Gould is going to refresh Mr. D'Onofrio's
24 recollection, the letter would probably be the best source
25 of it.

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MR. GOULD: This is a perfectly proper way.

THE COURT: I do not suggest that anybody has to offer this.

MR. GOULD: I am willing to offer it if he wants it.

THE COURT: I didn't say that you had to. I say you can go on and ask question about it.

MR. SORKIN: Fine.

THE COURT: Go ahead. This is cross-examination.

Q Mr. Mitness, didn't you write to Mr. Brodsky, and this was in 1972, and didn't you say that a couple of days after you got to this place in Zambia, whatever it is called, you and Gail went to the local dance club? You remember that?

A Yes, sir.

Q You remember what happened at the dance club?

A Yes.

Q What happened at the dance club?

A I got beat up, I believe. There was some -- I don't remember the physical entanglements.

Q You don't remember what happened?

A Not at this m-ment.

Q You tell us exactly what happened when you went to Zambia with this former British Intelligence agent and you

1 gab-5

D'Onofrio-cross

2 went to a night club or dance club and you got beat up.

3 A I was engaged in some sort of physical activity.

4 I don't remember, sir.

5 Q Don't you remember what you told Brodsky?

6 A No, I do not, sir.

7 Q Did you tell him the truth or did you tell him
8 lies?

9 A Some of it was lies, most of it was the truth.

10 Q Tell us what you remember was the truth and what
11 were lies?

12 A I don't recall because I do not have the document,
13 sir.

14 Q You mean you have to look at your letter to remember
15 what happened?

16 A Absolutely, sir.

17 Q What was the name of the night club?

18 A I don't recall, sir.

19 Q How many people did you have this physical venture
20 with?

21 A I don't recall, sir.

22 Q Were you seriously hurt or not?

23 A No, sir.

24 Q Did you have any bruises at all?

25 A I may have. I don't recall.

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D'Onofrio-cross

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Q Were you beaten badly?

A I don't recall, sir.

Q You have no recollection of whether you were beaten badly or not?

A No, sir.

Q Do you want to search your mind and try to remember? Have you ever been beaten badly before this?

A I don't think so, sir.

Q In your adult life, sir, have you ever been beaten badly?

A Well --

MR. SORKIN: I object.

A It is very vague --

MR. SORKIN: Excuse me. I object to the term "badly." I don't know what badly means.

THE COURT: Overruled.

MR. GOULD: I can satisfy Mr. Sorkin on my selection of pros very easily. If he wants to persist in his objection, I know how to deal with it.

THE COURT: I just overruled the objection.

MR. GOULD: Thank you.

Q Now I want you to tell his Honor and this jury whether ever in your adult life you have been beaten badly?

1 gab-7

D'Onofrio-cross

2 A I believe I was beaten badly once then, but I
3 don't know what you call badly. Is it broken ribs, broken
4 bones? I have been beaten when I was a Marine, in the
5 Marine Corps, I was beaten when I was in the war in Israel.
6 I have been --

7 Q You were in what war in Israel?

8 A The evacuation in 1948.

9 Q What did you do then?

10 A 1948 I was in the U. S. Marines --

11 MR. SORKON: Keep your voice up, Mr. D'Onofrio.

12 I am sorry.

13 THE WITNESS: I am sorry.

14 A In 1948 I was one of the United States Marines
15 sent into Israel to evacuate American people, American Consul
16 American oil men, field ministers and whatnot.

17 Q You were beaten badly then?

18 A I had some times, yes, sir.

19 Q You were beaten badly when you were in Israel in
20 1948?

21 A Yes, sir.

22 Q You remember it?

23 A Yes, sir.

24 Q What injuries did you receive?

25 A I lost my left ear and I received a disability

1 compensation for the past 27 years from the United States.

2 Q Other than that experience, and you remember what
3 happened when you were beaten badly in Israel?

4 A I can remember. I am getting checks every month
5 for 28 years.

6 Q Now I want you to tell us what happened to you
7 when you were beaten badly in Zambia in 1969.

8 A I don't recall.

9 Q Were you hit in the face?

10 A Yes.

11 Q Were you hit in the lower part of your body?

12 A I am sorry, if you are beaten at all, it is
13 hard to recall what is badly and where you are hit.

14 Q Were you hit with fists or clubs?

15 A I believe it was fists.

16 Q How about pistols, didn't somebody use a pistol
17 on you?

18 A I don't recall.

19 Q You have no recollection of a man hitting you
20 with a pistol?

21 A I don't recall, sir.

22 Q What happened after you were beaten in this place?

23 A I don't recall, sir.

24 Q What did the girl do? Was she with you when you
25

1
2 were beaten?

3 A Yes, she was, but I don't recall.

4 Q What did she do?

5 A I don't recall, sir.

6 Q Did the Government take any action, was anybody
7 arrested?

8 A I believe the girl was sent back to the United
9 States and the Washington Post carried a story on it, but
10 I don't have a recollection at this moment of the aftermath.

11 Q Do you remember what happened to the girl?

12 A She got beaten very badly.

13 Q After that do you remember what happened?

14 A At that moment, no, I don't.

15 Q But at any time after that did you ever hear about
16 this girl -- her name was Gail?

17 A Yes, sir.

18 Q What happened to her --

19 A She was interrogated very badly by members of
20 the secret police and forced out of the country, her visa
21 was taken away, I believe, and the U. S. Consulate inter-
22 vened and brought her back to the United States and the
23 story I think dissolved there. I don't think there was
24 much further conversation.

25 Q In this group you went to Zambia with there was

1 a man named Marshall?

2 A Yes, sir.

3 Q Who was Mr. Marshall?

4 A A gentleman that last year was picked up as --
5 he was arrested by the FBI as a foreign-spy, as a double spy,
6 I believe, for carrying electronic surveillance gear, arrested
7 as an agent of the Zambian Government in Washington.

8 Q You went to Zambia with him?

9 A Yes.

10 Q What happened to him in Zambia?

11 A I don't recall. I think he went over on the
12 other side.

13 Q The other side of what?

14 A He went to the Zambian Government instead of staying
15 with the U. S. Government.

16 Q How long did this adventure take in Zambia?

17 A A couple of weeks, sir.

18 Q Did you get paid for it?

19 A No, sir.

20 Q Nobody paid you?

21 A No, sir.

22 Q Why did you do it?

23 A For personal gains. I wanted to invest and I
24 became good friends with the president of the country and
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D'Onofrio-cross

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I wanted to take advantage of investment opportunities in copper, exploration and its natural resources.

Q Who put you onto that?

A A fellow named Michael Doud.

Q Who is Michael Doud?

A Mrs. Eisenhower's nephew.

Q He put you onto it?

A Yes, sir.

Q You didn't answer an ad in the newspaper or anything?

A No, sir.

Q You didn't discuss it with the FBI?

A No, sir.

Q You didn't tell them you were going?

A No, sir.

Q Did anybody ever say to you, "Ray, one of our sister agencies in Washington needs a man and you fill the requirements"?

A No, sir. That was a lie.

Q That is a lie?

A Yes, sir.

Q Did you tell Mr. Brodsky that the FBI told you that one of its sister agencies in Washington needed a man and that you filled the requirements?

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A You say didn't I tell Mr. Brodsky? I don't believe I ever mailed that letter to Mr. Brodsky.

Q But you wrote the letter?

A Yes, sir.

Q You wrote it in the letter?

A You keep saying I told him. That letter never went to Mr. Brodsky.

Q Oh, excuse me. The letter was addressed to David Brodsky, wasn't it?

A Yes, sir.

Q There is no question about it?

A I said it was never mailed.

MR. SORKIN: Your Honor, we have no objection to Mr. Gould reading it and putting it into evidence.

MR. GOULD: I offer it as Defendant Stoller Exhibit C in evidence.

xxx (Defendant Stoller Exhibit C was received in evidence.)

MR. SORKIN: May I look at it, Mr. Gould?

MR. GOULD: Yes. Don't you have it?

MR. SORKIN: Mr. D'Onofrio says it wasn't mailed so I guess we wouldn't have it.

MR. GOULD: Well, let me have --

MR. SORKIN: Well, let me read it first, please.

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(Pause.)

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MR. SORKIN: I am finished.

3

Thank you, Mr.Gould.

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MR. GOULD: May I read this to the jury, your

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Honor?

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THE COURT: Yes, sir.

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MR. GOULD: May I suggest while I read it to the

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jury you listen to it because I am going to ask you some

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questions about it.

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THE WITNESS: Surely.

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D'Onofrio-cross

2 MR. GOULD: Ladies and gentlemen of the jury,
3 this is a letter the witness says he wrote on September 18,
4 1972. It is addressed to Mr. David Brodsky, and we have
5 already identified him, he is the fellow that preceded Mr.
6 Sorkin in this matter.

7 (Mr. Gould reads to the jury from Defendant
8 Stoller's Exhibit C in evidence.)

9 A What does Gavin Scotti say?

10 Q He didn't say anything. He just has his name on
11 the bottom of the letter as getting a copy of this, isn't
12 that right?

13 A Yes.

14 Q You put it down there?

15 A No, my secretary.

16 Q You dictated this letter?

17 A That is correct.

18 Q And you told your secretary to whom you wanted it
19 sent?

20 A I told her to send it to the list of people
21 that were on the previous letters of the other letters I
22 had sent when I ordered her to send it.

23 Q And this was the letter?

24 A It was never sent.

25 Q We have it clearly that some of it is true and

1 rmrf 2 D'Onofrio-cross

2 some of the letters are lies?

3 A Yes.

4 Q Some of them are deliberate falsehoods?

5 A That is correct.

6 Q Would you be good enough to tell us why you
7 wrote this letter to Mr. Brodsky?

8 A To impress him at the time that I had other
9 activities which I thought were CIA activities at the time
10 and in order to bargain better with him and the lying portion
11 only is that portion that the FBI introduced me.

12 Q The rest is true?

13 A The rest is almost entirely truthful.

14 Q You went to Washington, didn't you?

15 A Yes, sir.

16 Q And you did discover, did you not, that the
17 sister agency was the CIA?

18 A No, sir, I met with a --

19 Q That is a lie?

20 MR. SORKIN: Your Honor, I ask he be allowed to
21 finish the answer.

22 MR. GOULD: I want yes or no answers, your Honor.

23 THE COURT: I will allow it.

24 Q That part is a lie?

25 A Would you please repeat the question?

1 rmrf 3

D'Onofrio-cross

2 Q When you say you went down to Washington and
3 discovered that the sister agency that you had said the
4 FBI had referred you to was the CIA --

5 A That is the lie.

6 Q When you said that you took an examination and
7 passed it with flying colors, that was a lie?

8 A I don't know what you mean by an examination.
9 I mean an interview. That is the truth.

10 Q Did you take an examination or didn't you?

11 A I was looked upon quite closely. I call it an
12 examination.

13 Q When you said, "I passed final inspection and
14 qualifications with flying colors and I am introduced
15 to the team in the project," you didn't pass any inspection
16 in the CIA, did you?

17 A I thought I was passing inspection --

18 Q You were never in the CIA in your life?

19 A No, sir. I told you later that I did not know
20 that was not a CIA project.

21 Q What did you think it was?

22 A I thought it was.

23 Q What made you think that?

24 A I was told.

25 Q By who?

1 rmrf 4 D'Onofrio-cross

2 A Mr. Doud and Mr. Marshall.

3 Q Where did they tell you?

4 A Mr. Marshall told me in Zambia. Mr. Doud made
5 it look like it was a project in which I could prosper.

6 Q When you say you went to Washington and you
7 were interviewed by somebody, you tell me now where you
8 were interviewed and who interviewed you.

9 A I sat with Mr. Michael Doud and another British
10 man and I don't recall his name.

11 Q Where?

12 A At Mr. Michael Doud's office in Washington.

13 Q That is all you remember?

14 A I remember the street --

15 Q Did he tell you, Mr. Michael Doud, he was
16 representing the CIA?

17 A No, sir. He --

18 Q Did anybody tell you --

19 MR. SORKIN: I ask : he be allowed to finish,
20 your Honor.

21 Q Did anybody tell you they were working for the
22 CIA in this project until you got to Zambia?

23 A Marshall did.

24 Q Where and when?

25 A In Zambia.

1 rmrf 5 D'Onofrio-cross

2 Q When you left the United States did you know you
3 were working for the CIA?

4 A No, sir.

5 Q You told us before why you went to Zambia.

6 A Yes, sir.

7 Q And you say further that you went to Zambia to set
8 something up, correct?

9 A Yes, sir.

10 Q An electronic factory?

11 A Yes, sir.

12 Q Is that the truth?

13 A It was one of my projects, yes, sir.

14 Q Did you tell anybody that that was one of your
15 projects?

16 A Yes. I spoke to the Government about it, I
17 was setting up --

18 Q You spoke to whom?

19 A The Zambian Government.

20 Q You went there and told the Zambian Government
21 you were going to set up a small electronics factory?

22 A Yes, and an egg plant to produce fertilizer
23 for eggs and a cold storage plant and a water supply
24 operation and a cattle operation.

25 Q You told them you were going to do all these

1 rmrf 6 D'Onofrio-cross
2 things?

3 A Yes, sir.

4 Q You didn't do any of them, did you?

5 A I started on a lot of it but I felt the country
6 was too dangerous for me to exist in.

7 O Which did you start on, the electronics, the
8 eggs --

9 A I started on the cattle, the eggs and the cold
10 storage plant.

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2 Q Now, sir, how about bugging the Chinese Embassy
3 and the Soviet Embassy, who told you about that?

4 A Yes, sir.

5 Q Who told you about that?

6 A Marshall and one of the other Zambian agents.

7 Q They told you that in Zambia, right?

8 A And also -- well, yes, it all took place in Zambia.

9 Q Let's not take too much time with this, Mr.
10 D'Onofrio. You know Gail, don't you?

11 A Yes, sir.

12 Q You would recognize her if you saw her?

13 A I haven't seen her in a long, long time.

14 Q You spent a good deal of time with her?

15 A No, only a couple of days.

16 Q Would you know her if you saw her?

17 A I doubt it very much.

18 Q If she walked in this courtroom, would you know
19 whether that was Gail or not?

20 A No, sir.

21 Q No?

22 A No, sir.

23 Q I suggest to you that there was no Gail.

24 A You suggest?

25 Q Yes. Is that true, that there was no Gail?

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A That is a lie.

Q That is a lie, my lie?

A Your lie.

Q I see. You are telling us now, sir, under oath in this case, that you went to Zambia with three other people, one of them a lady named Gail, who was British, and to your knowledge a former agent of the British Intelligence?

A To my knowledge, yes, sir.

Q Yes. She told you that?

A And Marshall and an-ther agent from the Zambian Government.

Q And Marshall, you say, has never been heard from since?

A No, I just told you he was arrested by the FBI last September, I believe, for spying on the United States.

Q Would you really know Mr. Marshall if you saw him now?

A Probably I would, but I am not too certain.

Q If he walked in this room right now, would you be able to say that it is Marshall?

A I think I could, sir.

Q You could. You are not sure about Gail?

A I am not sure about Gail, no, because girls have different color hair and they change their styles.

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Q How about Mike Doud, you would know him?

A Absolutely.

Q Actually all the information you got you got from Mike Doud, didn't you?

A No, sir, from Marshall. Mike Doud on the economic end, Marshall on the undercover activity end. Marshall talked about commercial activities.

Q I just want to ask you one more little question about this.

A Yes, sir.

Q After you found out that Gail had been arrested by the Zambian police, as you tell us, and escorted to the border, what did you have to do with it, anything at all?

A No, sir.

Q Nothing thereafter?

A No, sir.

Q Didn't Doud ask you to do something?

A Doud met with me.

Q Yes?

A And told me of the problem.

Q Yes.

A Gave me a tape transcript while she was in a hospital and asked me if I had any serious repercussions from the Zambian Government.

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2 I turned the tape transcript over to the Federal
3 Bureau of Investigation and met with other agencies of
4 the Federal Bureau of Investigation that involved foreign
5 intelligence, told them the story in its entirety and gave
6 them the transcripts.

7 Q That is all you did?

8 A Please let me finish.

9 Q I am sorry. You do finish, by all means. By
10 the way, have you ever told this to anybody before, this
11 part of your story?

12 A No, sir.

13 Q This is the first time as far as we know that you
14 have ever told this part of it, isn't that right?

15 A That's correct.

16 Q It is not in the letter, is it?

17 A Well, no, the FBI has already heard the story.

18 Q They have heard the story?

19 A They have gotten the transcripts of the beatings
20 that Gail took, what my involvement was. I also was inter-
21 viewed last summer relative to Marshall.

22 Q Yes. You told this whole story to the FBI,
23 all about Zambia, you told it all to them?

24 A Yes, except for those little lies that I just
25 told you about now.

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Q You wouldn't tell them lies, would you?

A No. I doubt it.

Q You went to the FBI and somebody sat and made notes of what you told them?

A I recall them making some notes.

Q Didn't they take a tape of what you told them?

A I don't know if they took a tape.

Q You know they made notes?

A And I know I also gave them a transcript of Gail's.

Q You are clear about that? You are clear about that?

A That I gave them a transcript?

Q And you told the story to somebody and he made the notes?

A I am not sure they made notes.

Q You just told me they made notes?

A I am a -- they generally make notes.

Q But you don't remember whether they made notes or not?

A No, sir.

Q But you do remember the name of the agent that you told the story to, don't you?

A I think it was Williams. I am not sure, something like that.

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Q Where was it?

A On East 63rd Street.

Q You went to the office on East 63rd Street and you sat down in a room with a man who you think was Mr. Williams, a special agent of the FBI, and you told him the story, right?

A No, I had another interview --

Q Listen to my question, if I am wrong, you correct me. I have already told you one lie that I am very sorry for.

A Yes, sir.

Q I don't want to tell you any more lies, Mr. D'Onofrio.

You say you went to 63rd Street in the office of the FBI and you sat in a room and you told this story, this operation, impossible story that you described --

A No, sir, I didn't tell that story in its entirety. I told them my relationship with Marshall and what I knew about Marshall after he had been captured by the United States Government.

Q You didn't tell them anything about what you did in Zambia?

A No, sir, they didn't ask me about it.

Q They didn't ask you about anything, you went there

voluntarily, didn't you?

A On the Marshall project, yes, sir.

Q Let me ask you something: Didn't there come a time when Marshall called you and asked you to go to the Zambian border, to go back to Zambia after you left?

A Marshall?

Q Yes.

A No, sir, that's wrong.

Q That didn't happen?

A No, sir.

Q You said it happened, didn't you?

A That's correct.

Q That is a lie?

A Yes, sir.

Q That is a falsehood?

A Yes.

Q A fantasy that you made up?

A Not a fantasy, a falsehood.

Q It is something that you described that never happened except in your mind?

A Yes, sir.

Q That is what I want. Now, sir, is that a habit of yours, to tell about things that never happened except in your mind?

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A No, sir.

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Q Is this the only time you ever did it?

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A I needed leverage and bargaining power.

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Q In other words, whenever you need leverage and bargaining power, you are prepared to tell lies?

7

A In the past.

8

Q Well, in September 1972 --

9

MR. SORKIN: Excuse me, your Honor. I must object not to Mr. Gould's question, but the actions of Mr. Stoller and Mr. Frank each time Mr. D'Onofrio answers. I think it is uncalled for and it is improper.

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MR. GOULD: What are their actions?

14

MR. SORKIN: Both our backs were to them.

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MR. GOULD: Then how do you know?

16

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MR. SORKIN: Because I turned around and heard them, sir. Mr. Frank and Mr. Stoller were smirking or making sounds.

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MR. GOULD: In the department of smirking, Mr. Sorkin, you have no peers, and I really resent that.

21

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MR. SORKIN: Excuse me, Mr. Gould. I am making an objection. I wish you would give me the courtesy of finishing the objection.

23

24

I ask that it not be continued, your Honor.

25

THE COURT: Since I was busy reading something

here, I did not observe it.

Let me suggest that if anything happens of this nature which in my judgment is wrong, you will hear from me without any further aid from any of you.

Proceed, Mr. Gould.

MR. SORKIN: Thank you, your Honor.

MR. GOULD: Thank you, your Honor.

Q Do you remember what I was asking you about when we were interrupted?

A Something about do I lie whenever there is pressure --

Q When you want leverage.

A At that time I needed leverage and I answered you I no longer need any leverage.

Q You got all the leverage you want now?

A I don't have any leverage. I made a clean slate.

Q I see. But there was a period in your life then when if you needed leverage you were prepared to tell lies?

A Many periods in my life when I needed leverage I told lies.

Q This is not the only one?

A No, sir. I lied many, many other times before Government agencies, Government officials.

Q And under oath?

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A And under oath, yes, sir.

Q And under oath?

A To protect myself, yes, sir.

Q Now, when you wrote this letter, Stoller Exhibit C, you were trying to make a deal with the United States Government, right?

A That is correct, sir.

Q Indeed, sir, this is one of a series of communications that you sent them?

A No, sir.

Q Weren't there others?

A That one was not sent.

Q You never sent this?

A I told you that before, sir.

Q None of these people ever got it?

A No, sir.

Q Why did you write it?

A I wrote it for the purpose of sending it, but it looked like I was almost finished with my negotiations with them and then there would be no need to, so I gave it to my partner, Mr. Herbert, and told him to put it in the file. So you must have gotten it from Mr. Herbert.

Q I didn't get it from anybody. I thought I got it from you.

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A I don't think you did, sir.

Q I am sorry. You say this is the only such letter
you wrote to --

A No, sir.

Q I asked you before -- we got to work better.

I thought I asked you if this was one of a series
of letters that you wrote?

A I said that one is not. There are other letters
I write.

Q That's right. And actually this was a regular
mailing list for your other letters, wasn't it? This one
that appears on Stoller --

A I don't know. I taped it. I never signed it. I
don't know that it was ever meant to be sent.

Q Didn't you just tell us a little while ago that
you told your secretary to send carbon copies to the ones who
got the previous letters?

A Yes, sir, if I ever decided to send it, and I
never made the decision to send it.

End 4A

1 gwrf 4b am 1 D'Onofrio-cross

2 Q These letters we are talking about, you remember
3 sending them? They are 1972, right?

4 A Yes, sir.

5 Q At the period when you were bargaining with the
6 United States Government for a deal?

7 A That is correct, sir.

8 Q You were trying to get the best deal that you
9 could get, correct?

10 A Yes, sir.

11 Q And in order to get the best deal that you could
12 get, you wrote letters to people, right?

13 A Correct, sir.

14 MR. GOULD: Would you be good enough to mark this
15 one first, this one next.

16 Q Where were you on September 4, 1972?

17 A I think I was in Switzerland. I'm not sure.

18 Q Do you have a passport that was in use at the
19 time you --

20 A I had a passport made up in my brother's name and
21 used my brother's passport.

22 Q Really?

23 A Yes, sir.

24 Q You mean you traveled from the United States
25 to Switzerland on the passport of somebody else?

1 gwrf 2 D'Onofrio-cross

2 A I just answered you that, yes.

3 (Defendant Stoller's Exhibits D, E and F
4 marked for identification.)

5 Q You mean that you went to the passport agency
6 and signed a passport application under your brother's
7 name?

8 A Yes, sir, because I often used his name. I used
9 Robert. My mother used to call me Robert, Ramon, Nicholas.

10 Q You didn't think it made any difference?

11 A I knew it made a great deal of difference. It
12 would help activate me get a passport.

13 Q When you went to the passport office you had to
14 swear to that passport application, didn't you?

15 A I swore and perjured myself.

16 Q Perjured yourself?

17 A Yes, sir.

18 Q And you put your pictures with the application,
19 didn't you?

20 A Yes, sir. I wanted to become a fugitive
21 desperately.

22 Q And you signed your brother's name on the pictures?

23 A I signed Robert D'Onofrio.

24 Q You knew you were committing a crime, didn't
25 you?

1 gwrf 3 D'Onofrio-cross

2 A Absolutely.

3 Q But you didn't hesitate?

4 A I was becoming a fugitive. It was just one crime
5 on top of another.

6 Q It didn't matter?

7 A No, sir.

8 Q I see.

9 So when you were in Switzerland and you wrote
10 these letters that you now remember or that you remember,
11 excuse me, you were there under a false passport?

12 A That is correct, sir.

13 Q And you went to England under that same passport,
14 didn't you?

15 A Yes, sir.

16 Q From Switzerland?

17 A Yes, sir.

18 Q We will come to that. Let's get to the letters.

19 This letter, Stoller Exhibit D, dated September
20 4, 1972, you wrote that one, didn't you?

21 MR. SORKIN: May I have the corresponding number
22 on the other side, Mr. Gould, for reference?

23 MR. GOULD: I will let you look at it. Get
24 any number you want.

25 MR. SORKIN: Thank you.

1 qwrf 4

D'Onofrio-cross

2 May I look at the others to get the other numbers?

3 MR. GOULD: Yes, sir.

4 MR. SORKIN: Thank you.

5 Q Let's make it as short as we can, Mr. Witness.

6 You recognize Stoller Exhibits D, E and F as
7 letters that you sent, one to Mr. Scuderi at the FBI,
8 that is Exhibit D, one to Joseph Ryan at the United States
9 Attorney's office -- just tell me whether you recognize
10 them -- and the third one, Exhibit F, you wrote to Brodsky.

11 A I just want to see if I signed them. You don't
12 mind, do you?

13 Q I don't know whether you signed them or not.

14 Did you write it --

15 A I wanted to also see if I signed it. The other
16 one I did not sign. Yes, I wrote all these letters, sir.

17 Q All three of these letters I have shown you, sir,
18 were written on September 4, 1972?

19 A Is that the date on it, sir?

20 Q That's right.

21 MR. SORKIN: '72, I believe.

22 MR. GOULD: I said '72.

23 MR. SORKIN: I'm sorry, that's right.

24 Q You are sitting in Switzerland, Zurich, and you
25 are trying to bargain with the United States Government

qwrf 5 D'Onofrio-cross

for a deal, isn't that right?

A Yes, sir.

Q I'm referring now to Stoller Exhibit D. Let's take that one first.

You said in this letter, Stoller Exhibit D, which is addressed to Mr. Scuderi of the FBI and mailed to him -- wasn't it, this was mailed?

A Yes, sir, it was mailed.

Q This was mailed to everybody whose name appears at the bottom?

A What names appear on the bottom, sir?

0 Ryan, North -- that means Whitney Seymour North --

A My German girl reversed the names.

Q I understand. Mr. Moss, Mr. Brodsky and Mr. Binney
at the FBI.

A That is correct, sir.

Q When you wrote this letter, you said:

"I think perhaps you could have provided a confidence bridge" --

MR. SORKIN: We have no objection to all of these documents being admitted into evidence, your Honor. We think we can expedite the cross if Mr. Gould wishes to introduce them into evidence.

MR. GOULD: Thank you very much. At the

1 qwrf 6

D'Onofrio-cross

2 appropriate moment I may avail myself of that generous
3 proffer.

4 MR. SORKIN: I ask Mr. Gould not to read from
5 the letter if it is not in evidence.

6 MR. GOULD: I think I have a right to do that.

7 THE COURT: I already told you gentlemen, and
8 I don't want to have any more discourses like this on
9 cross examination, counsel is entitled to ask questions
10 having to do with the contents of the letters even though
11 they are not in evidence.

12 Let us proceed without any more of these interrup-
13 tions.

14 Q I think you said, and this is your language here,
15 "I think perhaps you could have provided a confidence
16 bridge even though Brodsky and Tigue " -- Brodsky is one
17 United States Attorney, Tigue another one, isn't he?

18 A I don't think I ever met Tigue, only by telephone.

19 Q You --

20 A I did meet him in the office, yes.

21 Q Fine -- "even though Brodsky and Tigue were
22 using strong arm tactics on me"?

23 A Yes, sir.

24 Q That is what you said?

25 A Yes, sir.

1 gwrf 7

D'Onofrio-cross

2 Q What strong arm tactics did they use?

3 A Well, from a criminal's point of view or from a
4 lawyer's point of view?

5 Q From your point of view.

6 A I'm a criminal. If a United States Attorney
7 tells me he is going to indict me and indict me and put me
8 in jail and he will send me to jail for 20 or 30 years if I
9 don't cooperate, I consider that strong arm tactics.

10 Q And that is what they told you, if you don't
11 cooperate, we are going to indict you and indict you and
12 indict you and put you in jail for 20 years?

13 A For all the crimes I have committed.

14 Q That's right. And they said if you don't cooperate,
15 that is what is going to happen to you?

16 A That is correct, sir.

17 Q And that is what you meant when you said strong arm
18 tactics?

19 A Yes, sir.

20 Q Nobody ever hit you?

21 A Absolutely not, sir.

22 Q You would remember, wouldn't you, if anybody
23 ever hit you with anything?

24 A I think I would remember if a United States
25 Attorney ever hit me.

1 qwrfr 8

D'Onofrio-cross

2 MR. GOULD: I now offer this one in evidence,
3 D.

4 MR. SORKIN: No objection, your Honor.

5 THE COURT: May we have a better description
6 than this one?

7 MR. GOULD: Excuse me, your Honor.

8 Stoller Exhibit D.

9 THE COURT: All right.

10 (Defendant Stoller Exhibit D received in
11 evidence.)

xx

12 MR. GOULD: This is a very short letter, ladies
13 and gentlemen of the jury. I have already referred to the
14 only part of it that has any interest. That is the one
15 about the strong arm tactics.

16 Q On the same day, September 4th, that you wrote
17 this letter, Stoller Exhibit D, you wrote this letter,
18 Stoller Exhibit F for identification to Mr. Brodsky,
19 correct?

20 A May I see it?

21 Q Mr. D'Onofrio, you have seen these letters
22 in the last week or so, haven't you?

23 A In the last week or so I was -- I was told to
24 look at them, but I wasn't feeling physically well
25 and I didn't do my homework and I didn't look at them.

1 awrf 9

D'Onofrio-cross

2 Q Who told you to look at them?

3 A Mr. Sorkin says if you want to go over some of
4 the materials of the -- what do you call it, things
5 that you have sent, letters that you have sent, you are
6 permitted to look at them and you could look at them if
7 you want.

8 Q You didn't do it?

9 A I wasn't feeling well.

10 Q Are you feeling all right now?

11 A Yes, I'm feeling all right now.

12 Q When was it that you were sick?

13 A I wasn't feeling well.

14 Q What was wrong with you?

15 A I had a headache.

16 Q What day was that?

17 A The day that he had asked me if I would like to
18 look at all these things.

19 Q That was a couple of weeks ago?

20 A A week ago probably.

21 Q Since then you haven't read the letters?

22 A No, sir.

23 Q Nobody shown them to you?

24 A You are the first one, sir.

25 Q I'm sorry.

1 qwrf 10

D'Onofrio-cross

2 In this letter you said to Mr. Brodsky that, "If
3 you have any aspirations of furthering yourself in life, you
4 should take a course in human relations, and remember
5 the first axiom, you get more with honey than vinegar"?

6 A I remember that very well, those are my words.

7 Q What did you mean by that?

8 A I wanted Brodsky to be nicer to me and to let me
9 go for all the crimes I ever committed and to send me out
10 on the street as a free man and to forget about everything
11 else.

12 Q You wanted some money, too, didn't you?

13 A From Brodsky?

14 Q Weren't you just about this time asking the
15 United States Attorney's office to get you \$1,500 a month?

16 A That letter I believe was prior to my negotiations
17 with Mr. Morvillo. The money aspect came up after it,
18 when I decided maybe I was returning.

19 Q So when you said in this letter that, "You get
20 more with honey than vinegar," you didn't mean money?

21 A Heck, no.

22 Q You wouldn't dream of it?

23 A I had enough.

24 Q You had enough money on September 4, 1972, so
25 you didn't need anything from the United States

Government?

A That's right. If I came back to the United States Government, I would be coming back as a poor man.

Q But you were talking to him here on September 4th about coming back?

A That is correct.

Q As a poor man?

A I hadn't even negotiated a deal. I was just telling him about how badly he treated me and he ruined me because I was previously a good Government man.

Q You were referring to your prior contributions to the FBI, is that right?

A And to the Eastern District of New York.

Q I see.

MR. GOULD: I will offer this letter now, this being Defendant Stoller Exhibit F.

MR. SORKIN: No objection, your Honor.

(Defendant Stoller Exhibit F received in evidence.)

Q Now, sir, on that same day, September 4th, you have told us you wrote this letter, Stoller Exhibit E, to Mr. Ryan, the Assistant Chief of the Criminal Division of the United States Attorney's office over in the Eastern District?

A Yes, sir.

2 MR. GOULD: Just to save time I will offer this
3 in evidence and I would like to read it to the jury.

4 MR.SORKIN: We have seen this before, your Honor,
5 and we have no objection.

6 MR. GOULD: This is Stoller Exhibit E for
7 identification now offered in evidence.

8 (Defendant Stoller Exhibit E received in
9 evidence.)

xx

10 MR. GOULD: Ladies and gentlemen of the jury,
11 this is a letter this fellow wrote on September 4, 1972 to
12 Mr. Ryan, as I have described, and here it is and you may
13 have it at the appropriate time and look at it, but I think
14 I will read all of it and you listen.

15 Q Were you on those terms of intimacies with Mr.
16 Ryan that you addressed him as Joe?

17 A After two years with him, I felt I deserved the
18 intimacies in this letter but certainly not in a courtroom.

19 (Mr. Gould reads to jury from Defendant Stoller
20 Exhibit E in evidence.)

21 MR. SORKIN: Mr. Gould, I suggest you read from
22 my copy. I think you left out some words.

23 (Counsel confer off the record.)

24 MR. GOULD: I will be glad to use your copy,
25 but you better use mine, if I do that.

1 MR. SORKIN: Sure, I will be happy to.

2
3 (Mr. Gould continues reading to jury from Defendant
4 Stoller Exhibit E in evidence.)

5 MR. SORKIN: Do you want the mailing list too?

6 MR. GOULD: Scuderi, FBI, Morse, United States
7 Attorney, Whitney North Seymour, United States Attorney,
8 George Binney, FBI, Brodsky, Assistant United States
9 Attorney, and Professor Duke.

10 THE COURT: We will take the morning recess,
11 ladies and gentlemen, ten minutes.

12 (Recess.)

13 (Jury not present.)

14 THE COURT: Mr. Sorkin, let's not do any more
15 deliberating. Your speeches to Mr. Feldshuh, you don't
16 have to get into that now.

17 MR. SORKIN: At Mr. Gould's suggestion, I am
18 advising the Court of what the three of us decided --

19 MR. GOULD: Your Honor, 2:00 o'clock in pursuance
20 to the arrangement we made yesterday, he wants to withdraw
21 this witness for a while and bring in some foreign
22 witnesses and I said I would agree to that, so that the
23 Government doesn't have to pay them a few extra days.

24 THE COURT: As long as we have gotten into this,
25 let's go back.

Do you all agree that you want to bring in some other Government witness with the understanding that we have Mr. D'Onofrio back to finish on cross?

MR. COULD: Yes.

THE COURT: May I ask, roughly speaking, how much longer do you expect to go on with this cross? I am not trying to tie you down.

MR. GOULD: I understand. I am trying to give your Honor an honest estimate. I would say certainly the rest of the afternoon, subject to this interruption. I have two or three hours more with him. That is my best guess.

THE COURT: We will plan accordingly, recess at 1:00, and pick up this other witness.

(Jury present.)

THE COURT: All right, Mr. Gould.

Q Mr. D'Onofrio, on this letter, Stoller Exhibit E, which is that letter of September 4th, I would like to ask you a few questions about it.

A Is this the same letter you just read, Mr. Gould?

Q Yes.

Did Mr. Brodsky actually tell you that they were going to indict you in a lot of cases whether or not they can convict or whether you were guilty or innocent?

A No. They told me they would indict me in a

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D'Onofrio-cross

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lot of cases in which they knew I was guilty, and I added that guilt or innocence was unimportant to them.

Q Well, what you said was, in your letter, "They tell me they are not certain as to whether or not they could convict me or even guilt or innocence was unimportant to them."

A The guilt or innocence I added. They did tell me that even if they were not certain they could convict me, they would indict me.

Q But you added guilt or innocence?

A That is correct.

Q That wasn't true, was it?

A That is poetic license for a criminal.

Q Poetic licence?

A For a criminal, yes, and I am a criminal.

Q Did they tell you that their theory is that you can't fight six or seven indictments at one time, that the law of averages would be that they would break you?

A Yes, because they had six or seven indictments that I was guilty of.

Q Did they tell you that, just yes or no.

A Yes.

Q In the next paragraph you say, in this letter, "Now they are not involved in deal-making," and now you

are referring to Brodsky and Tigue?

A Correct, yes, sir.

Q "They are not involved in deal-making. They now become professed blackmailers with the power to execute."

That is what you said?

A Yes, sir.

Q Were they trying to blackmail you?

A Well, every criminal feels that when a United States Attorney tells him he is going to indict him for something else guilty of that he is being blackmailed. At that point I considered it blackmail. You don't like to admit it to yourself until you become sufficiently knowledgeable to admit you are a criminal --

Q They were telling you, according to what you said in the previous paragraph, they were going to indict you whether or not they could convict you?

A Could convict me, right, but of only crimes that I was involved in. You can't convict everyone in every crime they bring in.

Q The word blackmailers is poetic license?

A Yes, sir. used for the benefit of a criminal.

Q But then you say, "Within a few days, as true as life, I am indicted."

That was the one where only one sentence in the

20-page indictment referred to you?

A That is correct, yes.

Q That you were trying to suggest to the recipient of the letter was the kind of blackmail they were using on you?

A The kind of promise they gave me and delivered.

Q The threat that they made and they delivered, right?

A I was guilty and it is the crime I pleaded guilty to in one of those indictments you brought up.

Q That is what you meant by blackmail, that they threatened you --

A All criminals complain. They don't like to admit they are criminals.

Q All right.

Now, this reference to this caper, about the six million dollars in stolen treasury bonds --

A Yes, sir.

Q -- did you tell that to Mr. Brodsky and Mr. Tigue, did you tell them about that?

A I don't think so, sir.

Q Did you tell Mr. Sorkin about it?

A They are knowledgeable of it --

Q No, no --

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D'Onofrio-cross

517

A Did I tell them? I think I did, yes, sir.

O Did you give them the full details of it?

A I think I did, yes, sir.

O Did they take notes about what you told them?

A No, sir -- I don't recall if they took notes.

O Did they take a tape of what you told them?

A No, sir, I don't think they have ever taped me.

1 Q You say that Brodsky and Tigie were ridiculing
2 you and threatening you, right?
3

4 A Is that what the letter says?

5 Q Yes.

6 A If that is what it says, that is what I said.

7 Q How did they ridicule you?

8 A By not giving me enough of time to sit with them
9 and talk out my problem. To me that was a ridicule. In
10 light of the amount of work I had done for the Federal Bureau
11 of Investigation and my past cooperation with another Depart-
12 ment of Justice division -- I had about 20 minutes --

13 Q You thought you should be treated with more respect?

14 A I thought I should get more than 20 minutes.

15 Q They only gave you 20 minutes?

16 A That is all they gave me.

17 Q But it is true, is it not, that you felt that when
18 you wrote this letter you should have been treated with more
19 respect by these people?

20 A No, sir. I thought that I should have been
21 allowed a communication between the Eastern District and the
22 Southern District, being they had been working with me for
23 two years and knew my temper, my method, my mannerisms, and
24 whatnot. Certain people can get along together, certain
25 people are viable, can communicate to each other, and I

rmb-2

D'Onofrio-cross

1 asked for a bridge of communication so that some U.S.
2 Attorney in the Southern District would be able to understand my
3 references being made from the Eastern District the type of
4 man I am, that I will not go back on my word with the United
5 States Department of Justice and if I do make a deal of
6 any type or any nature, any plea bargaining, or anything I
7 could do, I would do and cooperate fully, and this was not
8 done.
9

10 Q You wanted them to understand that you would go
11 the whole route, correct? You would stand up for them?

12 A I would stand up to anything that I had to stand
13 up for, yes, sir.

14 Q You always have stood up for --

15 A For the United States Government, yes, sir.

16 Q For your friends and associates, have you?

17 A For my friends and associates, I don't think I
18 have many friends and associates.

19 Q Pfingst was your friend?

20 A Yes, sir.

21 Q He was your partner?

22 A Yes, sir.

23 Q He was your lawyer?

24 A Yes, sir.

25 Q He was y our friend?

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D'Onofrio-cross

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A Yes, sir.

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Q And you turned him in, didn't you?

4

A I turned him in?

5

Q Didn't you?

6

A No.

7

Q You testified against him?

8

A You were asking did I turn him in?

9

Q You said no, but you did testify against him?

10

A The Government indicted him and I testified and

11

pleaded guilty.

12

Q You did testify against him?

13

A Yes, sir.

14

Q YOU did furnish the Government information about

15

him?

16

A About the crime.

17

Q Yes.

18

A Yes, sir.

19

Q Stoller was your friend?

20

A No, he was never my friend.

21

Q Never your friend?

22

A I never liked him and he never liked me.

23

Q Do you dislike him intensely?

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A Pretty intensely, yes.

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Q You hate him?

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A I don't know if I hate him. I don't think I hate anyone in this world, but I dislike him intensely.

Q You dislike him as much as you dislike anybody, right?

A Oh, no, sir, I dislike him more than I dislike other people, but I don't hate him.

Q You dislike Stoller more than you dislike anybody else?

A More than other people I dislike.

Q How about Frank?

A I like Mr. Frank.

Q You like him?

A Yes, sir.

Q And he was your lawyer, wasn't he?

A On many occasions.

Q He was your friend?

A Are you talk-ng social friend, sir?

Q I dn't know, what is a friend?

A A friend is someone in a moment of need that you could count on. I don't think Mr. Frank was my friend, no, sir.

Q You don't think so?

A No, sir.

Q In this letter you say something about their

1 bringing phoney perjury charges against you. Do you remember
2 that?
3

4 A Yes, sir.

5 Q Did they threaten to bring phoney perjury charges
6 against you?

7 A They have threatened to bring perjury charges
8 against me.

9 Q Were they phoney perjury charges?

10 A At the time my attorney advised me that they were
11 erroneous and wrong and I thought they were phoney.

12 Q You used the word "phoney"?

13 A Yes, sir.

14 Q And when you wrote the letter you were trying to
15 convey to the reader of the letter the two officers of the
16 United States Government who had threatened to bring phoney
17 perjury charges against you?

18 A Yes, sir.

19 Q That is what you meant?

20 A In my mind, yes, sir.

21 Q In your mind?

22 A Yes, sir.

23 Q You have committed perjury?

24 A Yes, sir.

25 Q A number of times?

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D'Onofrio-cross

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A Yes, sir.

Q But they threatened to bring phoney perjury charges, you said?

A That is correct, sir.

Q You said, did you not, in this letter, that Brodsky, the brilliant one, as you describe him, was engaged in humiliating you, correct?

A Yes, sir.

Q How was Mr. Brodsky humiliating you?

A By his temper. As a criminal confronting a U. S. Attorney or Assistant U. S. Attorney, that there is no communication, the humiliation begins by him informing you of your rights under the law to remain silent --

Q That is humiliating?

A Yes, when you are a criminal and you know you are trying to hide it.

Q You said Brodsky was humiliating you, and Step Number 1 was that he informed you of your rights?

A And that was humiliating to me.

Q He said to you, "You have the right to remain silent," and that was humiliating?

A Yes, and all the words that go thereafter.

Q And you have the right to get a lawyer?

A And a right to say nothing.

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D'Onofrio-cross

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Q YOU found that humiliating?

A Very humiliating.

Q Anything else he did to humiliate you?

A Well, I think he mentioned, you know, "I know you have done something with the FBI," and passed it off as a nothing thing, and I don't know whether the FBI informed him properly or completely or gave him part of a report, and that was humiliating because of the way he said it and the activities I had undergone with the FBI were so strenuous and dangerous that it was humiliating to listen to a U.S. Attorney that there was a communication gap loss and he considered it as a nothing, like the weather, as I said, outside is nothing, but to me I almost lost my life.

Q Step Number 2 in the process of humiliation was that you felt you had performed very, very valuable services for the FBI, correct?

A Yes.

Q You felt you had risked your life for them?

A That's correct.

Q Isn't that what you said before?

A Yes, sir.

Q Brodsky didn't seem to be impressed by all of that?

A Because he didn't have the communication.

1
2 Q Well, whatever, but you felt when you said he was
3 humiliating you --

4 A He not only wasn't impressed, he just passed it
5 off, "So what, so you did some work for the FBI. You
6 are here now, in a different District and this District is
7 going to get you for every crime you committed," and that
8 was humiliating to me.

9 Q Anything else that he did besides warning you
10 of your rights and not being impressed by your services to the
11 FBI? What else did he do to humiliate you?

12 A He told me about the fact that he doesn't care
13 what experiences I have had in the Eastern District of New
14 York, and that if he did make any arrangements with me, it
15 was in writing and then words to the effect that Mr. Ryan was
16 stupid and they do not act that way here and they are going to
17 give me no immunity and they don't care what, if anything,
18 they are going to prosecute me for every crime that I have
19 been guilty of or involved in.

20 End 5B
21
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Q They are going to send you to jail for the rest of your life?

A I don't think --

Q Twenty years?

A Twenty years, yes. To me that's the rest of my life.

Q That's the rest of your life?

A Yes, sir.

Q In other words, you were dealing with a man who was threatening you? If you didn't cooperate, you were going to go to jail for 20 or 30 years, isn't that what he said to you?

A In essence, yes.

Q Didn't he also tell you what he thought of it, your activities and the kind of man you are?

A Excuse me.

Q Did he tell you what he thought of your activities? Did he use any words which suggested to you that he thought you were a pretty low character?

A A pretty what, sir?

Q What?

A What?

Q A pretty low character?

A I don't think so.

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Q You don't think so? Nobody told you that?

A I don't recall that.

Q All right. You also complained that Brodsky
an Tigue were taking away your dignity, right?

A Yes, sir.

Q And I assume you mean the same things you have
told us? That is the way they took away your dignity?

A Yes, they called me a criminal.

Q He called you a criminal?

A He told me he was going to indict me and put me
away for 20 years and that was taking away my dignity.

Q You were a criminal, weren't you?

A Every criminal --probably 90 per cent of the men
in jail say I didn't do it. Until you make up in your
mind -- you have to put yourself in a state of your mind then.
Then I am not a criminal, I can beat every case. You know,
I think I am lecherous. I disregard it. I am in a
different state of mind.

Q You mean you fantasize?

A I can hire the best lawyers, lawyers like your-
self, pay for them and make it through. I can't make it
through seven.

Q Through what?

A Through seven cases, seven indictments.

1

2

Q So you were facing seven?

3

4

A If they got me, maybe ten. At least I knew of seven immediately.

5

6

Q That is what you mean when you said that they made you into an animal?

7

A Yes, sir.

8

Q That is what you meant?

9

A That's right.

10

Q They had made you into an animal?

11

12

A They made me want to run away from the country and get the hell out.

13

14

Q They made you want to do some other things, didn't they? What else did they make you do that turned you into an animal?

15

16

A I don't recall, sir.

17

Q You used the word animal.

18

A I know I did.

19

20

Q What did you mean that they turned you into an animal?

21

22

23

24

25

A They made me something that before I was not. I was not the type of a person to run away. I had no reason to be shackled. I had no reason to be hand and leg shackled. They made me into something that I previously was not. That was a person no longer thinking for the U. S. Government,

1 but now thinking for myself.

2
3 Q That's right. Before you ran into these two
4 men whom you charged with threats, humiliation, blackmail
5 and so on, before you ran into them you were a perjurer,
6 were you not?

7 A Yes, sir.

8 Q And they didn't make you a perjurer, did they?

9 A No, sir.

10 Q You were a manipulator of securities, were you
11 not?

12 A Yes, sir.

13 Q And you had engaged in bankruptcy fraud, had you
14 not?

15 A Yes, sir.

16 Q You had committed a lot of very serious offenses,
17 hadn't you?

18 A Yes, sir.

19 Q And they had nothing to do with that?

20 A No --

21 Q But they --

22 A You didn't let me finish. I says, no, Mr.
23 Brodsky is probably one of the most timid individuals in this
24 District or at that time that I had ever met.

25 Q Mr. Brodsky didn't make you a crook, did he?

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A No, absolutely not.

Q After you met Mr. Brodsky, you were turned into something else which you call an animal?

A Yes, I phrased myself as an animal at that time.

Q You were not an animal before?

A No, because I lost my wife, my health, my fortune and that turns a man into an animal. He has nothing lese.

Q But you say that Brodsky and Tigue turned you into an animal?

A Yes, by not negotiating with me and not communicating with the other Districts to know that my nature was one that if I did make an agreement with the U. S. Government, he didn't have to restrict me in travel, etc., etc. There was no communication.

Q So an animal is a person who has no communication?

A An animal is a person that lost everything in his life and be humiliated in front of his family.

Q An animal is a person who really doesn't care about anybody but himself, isn't that what you meant by it?

A An avaricious person, one who cares about himself, yes.

Q They turned you into an animal?

A That is correct.

Q To wit, they turned you into an avaricious person

1 who doesn't care about anybody but himself, to use your
2 definition?
3

4 A At that time.

5 Q At that time, but now, of course, you are not an
6 animal any more?

7 A Absolutely not.

8 Q You also called them gunslingers, with gunslingers
9 like the Department of Justice, the Souther District employees.
10 Who were you talking about, Brodsky and Tigie?

11 A I used the term "gunslinger" for a person that
12 talks very quickly, too fast and someone who cannot get a
13 word in edgewise.

14 Q Like me?

15 A You are a gunslinger.

16 Q But Mr. Brodsky you just told us, he is a timid
17 little fellow?

18 A He's fast. He keeps going boom, boom, boom.

19 Q He is a gunslinger too?

20 A Yes.

21 Q He is like me?

22 A But he is timid, not like you.

23 Q I am very timid. What are the things they
24 threatened you with that you remember now, these gunslingers,
25 these fast-talking gunslingers? They threatened to put you

1 away for 20 to 30 years?

2 A For crimes I committed?

3 Q That's right.

4 A Yes, sir.

5 Q And they made you scared?

6 A You're darn right.

7 Q You were frightened to death of going away for
8 20 years, weren't you?

9 A You're darn right.

10 Q Has anybody told you that you are not going to go
11 away for 20 or 30 years?

12 A No, but my mind is now reorganized and I know
13 I am facing seventeen years.

14 Q Seventeen years?

15 A Seventeen years.

16 Q Who told you that?

17 A I can read. My indictments says five years, five
18 years, five years and two years.

19 Q Mr.D'Onofrio, do you really expect to go away
20 for seventeen years?

21 A If I go away for 17 years, I think I will be a
22 model prisoner and I will get out in the minimum parole,
23 about five years, and that is not a big chunk out of my life.
24 I am prepared to pay my debt to society.
25

1
2 Q You are doing it now, aren't you, by assisting
3 the process of justice? Isn't that what you are interested
4 in?

5 A I think that is part of rehabilitation.

6 Q You are being rehabilitated?

7 A I am rehabilitated.

8 Q You are rehabilitated.

9 A I am.

10 Q As you sit here now you are not engaged in any
11 activities which are corrupt?

12 A No, sir.

13 Q Nothing at all?

14 A No, sir.

15 Q And you are a family man, are you not?

16 A I was due to be remarried to my ex-wife, but
17 we decided to await the sentencing and see how long I will
18 have to be away. But I am a family man. I am living with my
19 son and my family in the meantime.

20 Q Are you living with any woman now?

21 A My former wife.

22 Q But you are not married to her?

23 A No, we refused to get married under these circum-
24 stances until the disposition of my cases are over.

25 Q But you represent yourself to people as husband

1 and wife, don't you?

2 A I am sorry, sir?

3 Q Do you represent yourself to people as husband
4 and wife?
5

6 A No, sir.

7 Q No?

8 A No.

9 Q How many times have you been married?

10 A I have been married once --

11 MR. SORKIN: I object. I don't think this is
12 necessary, your Honor, only in terms of relevancy, your Honor.

13 THE COURT: He has already answered he has been
14 married once.

15 THE WITNESS: I didn't finish the answer.

16 THE COURT: All right. Go ahead.

17 A I have been married once, I lived with a woman for
18 about seven years and I have been married a second time and
19 divorced.

20 Q So you have had two marriages and one, shall we
21 say, liaison?

22 A I --

23 Q And a liaison with a lady, you lived with a lady?

24 A I call it a mistress relationship.

25 Q Now you are on the point of remarrying your second

1
2 wife?

3 A Reconciliat8on, yes, sir.

4 Q You said in this letter to this little fellow
5 Brodsy, "I am capable of urinating ice water."

6 A Yes, sir.

7 Q What did you mean by that?

8 A I am capable at times of being non-emotional.

9 Q Unemotional?

10 A At that time unemotional.

11 Q You are still unemotional?

12 A Today I am emotional.

13 Q You are not capable of urinating ice water today?

14 A No, I cried the other night in my hotel room.

15 Q Did you?

16 A Yes, because my son was ill.

17 Q And you wept?

18 A Yes, I did cry.

19 Q What was the matter with him?

20 A He was ill and I was concerned. I talked to my
21 ex-wife about it. I was also probably a little depressed
22 over being in a courtroom and with a jury and knowing that
23 my whole life will be exposed to you and eminent counsel.
24 Your name precedes you. So I did weep for half an hour
25 or so in my hotel room.

1
2 Q You wept because your son was ill or because you
3 were afraid of this cross-examination?

4 A No, I had no fear of cross-examination, but the
5 total stress and strain of five lawyers on one witness,
6 five great minds, including yourself, and along with hearing
7 that my son was ill, didn't go to school the first day --

8 Q Was your son seriously ill?

9 A No, sir.

10 Q What did he have, a sore throat?

11 A I don't really know.

12 Q Hangnail?

13 MR. SORKIN: Your Honor, I don't think that is
14 necessary.

15 MR. GOULD: I don't think it is either. I didn't
16 put it into this thing.

17 THE COURT: Go to another point.

18 Q Now you are not capable of urinating ice water
19 any more?

20 A No longer, sir.

21 Q When you appeared before the grand jury and you
22 told the story about Mr. Stoller, were you then capable of
23 urinating ice water?

24 A I stopped urinating ice water, sir, on March 15th
25 of 1972, when I was captured by Scotland Yard, and put into

Pentonville Prison.

Q March 15, 1972?

A '73, excuse me, sir.

Q When you were arrested in England, you weren't arrested on anything that has to do with securities, were you?

A I was arrested on charges of perjury and for extradition.

Q Weren't you arrested for using a false passport?

A No, sir.

Q Didn't they know about the false passport?

A Yes, sir.

Q What was the perjury?

A The perjury charge emanating from Mr. Sorkin's previous statement, complaint, as you call it.

Q I see. You were arrested over there on a charge of perjury in the United States, is that your understanding?

A That's not my understanding, that's the fact, sir.

Q You told us before, sir, that you have been married twice?

A Yes, sir.

Q Were you ever married to a lady named Muriel Barder?

A No, sir.

Q Did you ever go through a marriage ceremony with

1 gab-13
2 a woman named Muriel Barder?

3 A No, sir. She claimed that. It is a falsehood.
4 It is a falsehood by herself and she can perjure herself
5 if she so desires at your request.

6 Q Did you ever appear before any public official
7 or religious official and go through a form of marriage with
8 her?

9 A No, sir.

10 Q Did you ever represent to anybody that you were
11 married to a woman named Muriel Barder?

12 A Oh, yes, sir. I represented it many times, that
13 Mrs.D'Onofrio, at her interest, so that people wouldn't know
14 we were man and woman living together, so she could have
15 some protocol and some honor in her mind.

16 Q But no marriage?

17 A No, sir, she was not divorced. I would have
18 been a bigamist. I needed that added to my crimes, too?

19 Q Now, sir, after you wrote the letters to Mr.
20 Brodsky and all these people whose names are down at the
21 bottom of the list there, shortly thereafter you had some
22 telephone conversations with Mr. Morvillo that we talked
23 about yesterday, right?

24 A That is correct, sir.

25 Q After the telephone conversation with Mr. Morvillo,

1 the one that is referred to in this Stoller Exhibit B that
2 we spent some time about yesterday, did the Government respond
3 in any way to you? Did you hear from them?

4 A You mean after they called me on that memo?

5 Q After the telephone conversation of October 3,
6 1972, when you called Morvillo, did you talk to anybody in
7 the Government after --

8 A I may have phoned on a number of occasions one,
9 two or three thereafter, but I don't recall.

10 Q In other words, you were trying to get them to
11 respond?

12 A I was trying to bargain.

13 Q You were trying to bargain with them?

14 A Yes, sir.

15 Q Did you finally bargain with them?

16 A No, sir.

17 Q All this time you were in Zurich, correct?

18 A In traveling to Italy, Spain and other areas.

19 Q Using your brother's passport?

20 A Absolutely, yes, sir.

21 Q Then you went to England, correct?

22 A Yes, sir.

23 Q And between time that you had this telephone
24 conversation and these other attempts and the time you got to
25

1 England, you didn't hear anything from the United States
2 Government?
3

4 A No, sir.

5 Q When did you get to England?

6 A About ten or twelve days before I was arrested.
7 So that would be on or about March 1 of 1973.
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2 Q And on March 1, 1973 you found yourself in jail
3 in England, right?

4 A No, sir. I was working in England for about 12
5 or 13 days and I was arrested on March 15th by five
6 Scotland Yard detectives at gunpoint.

7 Q And you were taken to a jail of some kind?

8 A I was taken to many jails until they could find
9 one that corresponded with the treaty law because they had
10 to isolate foreigners.

11 So I was in one prison, Bow Street Prison, and then
12 I was in I believe Bruxton Prison another few days. Then
13 I finally wound up in a place -- they put me in a cell
14 alone -- which was Pentonville Prison, Her Majesty's
15 Prison.

16 Q When did you get to Pentonville?

17 A About three or four days after my arrest. I
18 was arrested on the 15th. It would probably be on the 18th
19 or 19th, I guess.

20 Q While you were in Pentonville Prison, did you
21 again communicate with the United States Government?

22 A No, sir.

23 Q Did they communicate with you?

24 A My ex-wife Sandra arrived in England when she
25 read in the New York Times I was arrested on March 16th

1 or 17th with my sister, Miss Daley, both of them coming
2 independently and not knowing each other were there. They
3 met with me and the prison officials allowed them to have
4 a meeting with me, and my ex-wife hired Queens counsel to
5 defend me and arranged for my defense and then asked if
6 she could on my behalf call the United States Government,
7 Mr. Ryan or Mr. Brodsky, and arrange that this would probably
8 be the best time for me to start negotiating, being I'm
9 going to be there for a long, long time in England.

10
11 So she conducted the initial telephone calls
12 to the Justice Department. I don't know who she called
13 first or second. She arranged for Mr. Brodsky and a
14 gentleman named Mr. Lester Green from the Securities and
15 Exchange Commission to come over and -- it was very difficult
16 because it was the high holy Jewish holidays when they
17 arrived.

18 Q Go ahead.

19 A And I did the negotiating with them in one of the
20 prison rooms assigned for attorneys, counsel and visitors.

21 Q And you did negotiate with Brodsky, right?

22 A My attorney, Clifton Davis, myself, my wife -- my
23 ex-wife was present.

24 Mr. Lester Green and Mr. David Brodsky and
25 an assistant of my Queens counsel, another barrister.

Q You entered into a contract with them --

A Not then. We negotiated. I wanted to get only one criminal indictment and David said, "That is out. That would have been the deal you could have made if you would have agreed to Bob Morvillo back in September."

MR. SORKIN: Excuse me. David --

MR. GOULD: He means Brodsky.

THE WITNESS: Brodsky.

Q Did you call him by his first name?

A Do I --

Q Brodsky?

A I didn't know him well. I always called him Mr. Brodsky.

Q I just want to know.

All right.

A But I said, "Certainly, Mr. Brodsky. You can get Mr. Morvillo to change his mind."

He said, "No way."

I says, "Try."

He came back the next day and he told me he had spoken to Mr. Morvillo and Mr. Morvillo said each crime that is outstanding I will have to face if I return.

I then -- my Queens counsel then told Mr. Brodsky that "There doesn't seem to be any reason now for Mr.

2 D'Onofrio to return because if we beat you in the case, if
3 in another couple of days you are not prepared" --
4 "You have only 60 days to prove your case and you are
5 relatively unprepared."

6 He said, "If he beats you, he can just stay out
7 of the United States forever. If you win, you can only
8 charge him for five years for the perjury count. I
9 can't recommend to my client to return to the United States
10 to face five, ten, 15 or 17 or 20 years when all he is
11 legally bound to do even if you win is five years."

12 So my attorney, my barrister and Queens counsel
13 says, "We don't like the deal."

14 Emotionally I wanted to return to the United
15 States, as I said, pay my debt to society and live
16 amongst my family and children.

17 I made an agreement which was highly disagreeable
18 to me at that time, that it could have been more favorable
19 had I not returned voluntarily. I returned to the United
20 States voluntarily under my own steam.

21 Q After making a written agreement with the United
22 States Government?

23 A Yes, even after. I could have gotten --
24 the Scotland Yard said the moment they left me out of the
25 jail you are under no restraint to go back to the United

States. We cannot hold you. They have dropped the charges. If you want to run, you can run.

There were two federal marshals there. The federal marshals were not permitted to carry their weapons into England. They had just come from Broken Knee, the Indian uprising, and they came to the prison to collect me and they were told that they were not allowed to touch me, hold me, apprehend me or anything else.

As far as the British Government is concerned, I released the British Government from any false arrest charges, the United States Government dropped their charges and the marshals, who were elderly men, asked me to please not cause them any trouble.

I says this is not my MO, I'm not a --

Q You don't cause people trouble?

A I don't cause physical trouble to people. I says, "I have every intention of returning. We will drive back in a taxicab together."

He says, "We can't stop you."

Mr. Green was with us. He says, "I want you to give me your word of honor that you will return with us to the airport," because they weren't even allowed Scotland Yard escorts. I could have gone anywhere I wanted.

--

2 I shook hands with Mr. Green and I returned to
3 a United States carrier and upon landing they then handcuffed
4 me and arraigned me, sir.

5 Q The point you have been trying to make, you came
6 back voluntarily?

7 A No, that is not the point I have been trying to
8 make. I have been telling you the story of the question
9 you asked me. You asked me a question that elicited a
10 narrative.

11 Q Do you remember what the question was?

12 A It seemed to me to elicit a narrative.

13 Q Let's go on.

14 You made an agreement with them while you were
15 still in Pentonville Prison, right?

16 A After two visits from the Government, yes, sir.

17 Q Brodsky and Mr. Green of the SEC came into
18 Pentonville Prison, they sit down with you and your lawyer
19 and you start negotiating?

20 A Yes, sir.

21 Q And you want some things and they don't want to
22 give you some things and so on, correct?

23 A Yes, sir.

24 Q And finally you work out an agreement?

25 A Yes, sir.

Q And you reduce it to writing?

A Yes, sir.

Q And the writing to which you reduced it is this document, is it not, Stoller Exhibit A for identification?

A Yes, sir.

Q That is the contract you made with the Government?

MR. GOULD: I offer it in evidence.

MR. SORKIN: No objection, your Honor. I don't have any objection at this time.

(Defendant Stoller Exhibit A received in evidence.)

Q Do I understand your testimony, Mr. Witness, to be that from the day you put your signature on this document you have regarded yourself as reborn, a new man?

A Yes, that is right, sir.

Q You are not a criminal any more, since that day?

A I am a criminal right now.

Q I beg your pardon?

A I am a criminal right now, I'm a felon.

Q You don't do any bad things any more?

A No, sir.

Q You don't commit perjury any more?

A No, sir.

Q All right.

2 One of the things in this paper that you said
3 you would give the Government, this paper being Stoller
4 Exhibit A -- you said you would give them a narrative
5 statement of the facts "compromising" -- I don't know
6 what that means, maybe you do -- "compromising the offenses
7 of which I am accused and a detailed statement of facts of
8 the offenses to which I have pleaded guilty," correct?
9 Do you want to look at it?

10 A Lawyers drew it up.

11 Q But you signed it, didn't you?

12 A Oh, yes, sir.

13 Q You read it before you signed it?

14 A Oh, yes, sir.

15 Q That is in there, what I just read to you?

16 A I just want to refresh myself, sir. It is the
17 first time I seen it since I signed it I think.

18 Q Isn't that the paper you gave to the Government
19 the other day?

20 A No, sir.

21 Q No?

22 A No, sir.

23 Q All right.

24 MR. SORKIN: Your Honor --

25 Q My mistake.

2 MR. SORKIN: If I can speak to Mr. Gould for a
3 moment, I can clear this up.

4 MR. GOULD: Why? I'll be glad to speak to you,
5 sure.

6 (Pause.)

7 A What is the question, sir, on the narrative?

8 Q You agreed to give them a narrative of the
9 offenses of which you are accused?

10 A Yes, sir.

11 Q And you also agreed to give them a narrative state-
12 ment of the extent of your cooperation, right?

13 A If they requested it.

14 Q If they requested it.

15 Did you ever give them those narratives?

16 A I have given them some narratives that they
17 requested.

18 Q You have?

19 A Yes, sir.

20 Q Did any of those narratives that you gave them
21 have anything to do with the Training With The Pros?

22 A Yes, sir.

23 Q Now for our present purposes, sir, I'm going to
24 show you a paper which has thus far been marked as 3501-CC,
25 and I ask you if that is a copy of the narrative which you

2 gave them and signed on November 8, 1973?

3 A Yes.

4 Q And when you signed that you were trying, were
5 you not, to tell the Government everything that you knew
6 about Training With The Pros?

7 A Subject to the last paragraph in that narrative.

8 Q Let's see what that is.

9 Let me see if I can get straightened out.

10 A The last one or two paragraphs, subject to those
11 paragraphs.

12 Q Which is it, the last one or the last one or two?

13 A The one that says that it is capable of being
14 amplified, corrected, changed, altered. When I'm shown
15 documents -- I had nothing in front of me. I was doing
16 this strictly from my mind many years later and I have not
17 been prompted or talked to any Government agency about it.

18 Q That is what it says, right?

19 A I don't know if that is what it says.

20 Q That is just what you told me it says?

21 A Is that what it says then?

22 MR. SORKIN: Your Honor, I object. I think Mr.
23 D'Onofrio was just directing Mr. Gould's attention to the
24 appropriate paragraph.

25 THE COURT: We will let the jury decide that.

1
2 Q Let's see. This was written on November 8, 1973,
3 right?

4 A No, it says it was dictated for three days
5 prior and then written on a certain date.

6 Q It was written around November 1973?

7 A Yes, sir.

8 Q You had been back in the United States for six
9 or seven months, had you not, before this was done?

10 A I have returned May 5th.

11 Q And from May 5th until November were you questioned
12 by anybody about Training With The Pros?

13 A I believe in the grand jury the name may have come
14 up, but not in depth anywhere.

15 Q Are you telling us, sir, that this piece of paper,
16 3501-CC, is the first time that you ever gave the Government
17 a narrative description of your activities on Training
18 With The Pros?

19 A Yes, sir.

20 Q Why did it take so long?

21 A For them to ask me to give it to them?

22 Q Yes, do you know?

23 A Ask Mr. Sorkin, don't ask me.

24 Q Did you meet Mr. Sorkin when you came back?

25 A No, I met with Mr. Brodsky.

2 Q Did you tell Brodsky about TrainingWith The Pros
3 when you came back?

4 A Yes, sir.

5 Q And did you offer to give him a statement about it?

6 A I didn't offer him anything. As a criminal I
7 don't offer nothing. They ask me and I give. I can't
8 volunteer telling them what to do or where to go. The
9 United States Department of Justice acts on their own.

10 Q You mean if they didn't ask you about a crime you
11 wouldn't tell them about it?

12 A No, no, that is not true. If they ask me to give
13 a narrative -- you are talking about a narrative, not about
14 a crime.

15 Q Did you mention the subject of Training With The
16 Pros to anybody in the United States Attorney's office
17 from the day you got back from England after making
18 your contract --

19 A Yes, sir. I mentioned it to -- I told you, you
20 didn't let me finish -- Mr. Brodsky and then Mr. Brodsky left
21 the United States Attorney's office. I remember -- I
22 think I remember mentioning it at a grand jury in some
23 way, I think.

24 Then they transferred me to another United States
25 Attorney named Frank Velie who was so involved in other

1 narcotics cases that he had no subject matter, involving
2 SEC work.

3
4 Then I got kicked over to Mr. Sorkin, my enemy
5 for many years, and it didn't look like he was going to ask
6 me anything.

7 Then at some point I discussed it with Mr. Doonan,
8 the investigator, many of my crimes, and I'm sure it is
9 possible I could have mentioned Training With The Pros if he
10 interrogated me about it.

11 As far as a narrative, Mr. Sorkin called me in
12 one day and said, "Look, write me up a story on Training
13 With The Pros. We don't want to talk to you in depth
14 about it."

15 I says, "Gosh, I've got no material, no
16 nothing."

17 He says, "Give us your best recollections, as best
18 as you can."

19 I says, All right, I'll do it."

20 Q The fact is that very shortly after you came back
21 to the United States, to wit, on May 22, 1973, you sat
22 down with Doonan, Mr. Doonan here, and you gave him a
23 narrative about Training With The Pros?

24 A A narrative, sir?

25 Q You told him what you remembered about Training

With The Pros?

A I answered questions that he asked me and maybe I volunteered. I did not give him a narrative.

Q All right.

Then the next day you came back and you spent some time again with Mr. Doonan -- that's on May 23, '73 -- and you talked about Training With The Pros?

A Yes, sir.

Q When you talked to him, did you try to tell him the whole truth about it?

A To the best of my recollection at the time, I tried to recall everything I could. I was still armed with no papers or documents.

Q You mean when you were with Doonan he didn't have any papers or documents?

A Not on Training With The Pros, sir, or very little of that which I supplied. If they had any, they didn't show me any. They may have had bundles, but they didn't show me any.

Q But we are certain now that although you talked with Doonan about Training With The Pros in May of 1972, May 22nd --

A '73.

Q '73, excuse me -- you didn't produce the narrative

until six months later, correct?

A I wasn't asked to produce a narrative until six months later.

Q By the time --

A Six months. I don't know how much it is.

Q By the time you produced the narrative you had given him all the documents, correct, whatever you had?

A A little bit I had.

Q You never gave him any more, did you?

A No, sir.

Q So by the time you produced the document, this narrative, 3501-CC, you had given him all the documents you had relating to Training With The Pros?

A Whatever I had.

Q That's right. And then shown you other documents by the time you produced the narrative?

A No. That is the problem, they didn't.

Q They didn't?

A No, I wanted many things in order to produce a narrative.

Q What did you need?

A At least an offering circular.

2 Q They didn't have the offering circular?

3 A No, I didn't get it.

4 Q You mean you produced this narrative without the
5 offering circular?

6 A No, I did produce the narrative with the air of
7 an offering circular only.

8 Q Just tell me yes or no, when you wrote this
9 narrative did you have a copy of the offering circular
10 before you or not?

11 A I had it with me, yes.

12 Q They gave you a copy of that?

13 A Yes, I solicited it.

14 Q What else was it you didn't get when you wrote
15 this narrative?

16 A What do you mean? That is all I had.

17 Q Have you, since you wrote this narrative, seen
18 any other documents relating to Training With The Pros?

19 A Yes, I believe so.

20 Q What have you seen since then?

21 A I have seen some correspondence from the Bank
22 Hofmann and the nominees. The Government has never shown
23 me those documents --

24 Q They did?

25 A No, they had never shown me those documents

2 and I did not know they existed.

3 Q You knew they existed because you were there,
4 weren't you, when those documents were made up?

5 A Oh, yes.

6 Q You knew they existed?

7 A At the time, but I didn't know the United States
8 Government had them.

9 Q I want to know, sir, whether this narrative that
10 you wrote back in November 1972 --

11 MR. SORKIN: '73, your Honor.

12 Q -- '73, excuse me -- whether this narrative was
13 a fair, honest representation of what happened in Training
14 With The Pros?

15 A Subject to the paragraphs I told you in the rear.

16 Q The two paragraphs are, one, that it was being
17 dictated on November 3rd, 4th and 5th, that your sister
18 would be transcribing it, that she will take it off your
19 tape recorder and put it in narrative form, that you will
20 sign it, submit it to Sorkin and Doonan, with the
21 explicit understanding that it will be modified and
22 corrected upon "My further viewing of other documents and
23 transfer sheets," is that what you are talking about.

24 MR. SORKIN: There is one more sentence, your
25 Honor.

2 Q "But at least with this narrative in this form
3 we have some basis for beginning" -- I think it says
4 "out" or cut" --

5 MR. SORKIN: It should be "our".

6 Q "But at least with this narrative in this form we
7 have some basis for beginning our question and answer
8 theory."

9 MR. SORKIN: If Mr. Gould is going to read from it,
10 your Honor, we have no objection to it being offered in
11 evidence.

12 A I also said it was subject to amplification,
13 correction, modification, I think somewhere in that
14 narrative, but I had not thought of Training With The Pros
15 at all and then when you think about something day after day
16 and night after night you can bring yourself back into
17 conversations and people and things that are happening,
18 whereas in the form of a narrative you cannot, on its first
19 instance.

20 Q Mr. D'Onofrio, you came back to the United States
21 in the spring of 1973, correct?

22 A Yes, sir.

23 Q And you sat down with Doonan for two days, May
24 22nd, 23rd, 1973?

25 A Yes, sir.

Q And among the things you discussed with him was Training With The Pros?

A One of the lighter things I discussed with him, lesser things.

Q How long did it take for you to discuss this lighter thing with Doonan on May 22nd and 23rd?

A Perhaps an hour, hour and a half, but I had many other things.

Q From May 22nd or 23rd to November you didn't discuss Training With The Pros with anybody?

A No, I said there may have been occasions in the grand jury in between then that I --

Q But you didn't think about it?

A No.

Q It wasn't until you sat down in November to write this narrative?

A I didn't think about it because I thought it was out of the statute of limitations. I didn't know it. I am not a lawyer. I didn't think there would be a crime that could be prosecuted because the time was up, I didn't know. That is why I never thought about it.

Q We have it that from May to November you didn't think about Training With The Pros?

A No. I had enough of other crimes to think about.

2 Q In November something happened that made you think
3 of Training With The Pros?

4 A I was asked to write a narrative.

5 Q Who asked you?

6 A Mr. Doonan and Mr. Sorkin -- to the best of my
7 knowledge, just tell a story and I said it wouldn't be
8 any good -- "Just write the story as best you can remember
9 it at this time."

10 I said, "It will have an awful lot of loopholes
11 in it, omissions or changes and alterations."

12 "Look, just do the best you can, get it out for
13 us."

14 Q Even if it is wrong, get it out.

15 A No, no, they did not say --

16 MR. SORKIN: Objection, your Honor.

17 THE COURT: I sustain that objection.

18 Q You told them when you gave it to them, "This is
19 what I am giving you, but it may have mistakes"?

20 A Yes, errors.

21 Q Does it have mistakes in it?

22 A Yes, errors.

23 Q Do you know what errors?

24 A I know one blatant error.

25 Q What is that?

1
2 A There is one error in which I juxtaposed my mind,
3 and I had been working on another case with them, and
4 juxtaposed a paragraph --

5 Q What does juxtaposed mean?

6 A It means I had taken the contents in my mind of
7 another case and another paragraph of another person and
8 stock and put it into this narrative because the people
9 we were closely related to -- I was doing a narrative on
10 that other stock and they were working on that case more
11 heavily than this case.

12 Q So you just made a mistake and you put into
13 this some stuff about that other case?

14 A Well, my mind was -- I am talking into a recorder
15 and trying to --

16 Q Who worked with you on this?

17 A No one. Myself.

18 Q But you had papers in front of you?

19 A Just the offering circular.

20 Q That is all?

21 A Yes, sir.

22 Q Is that the only error you remember now, that
23 juxtaposed --

24 A There may be other errors in there. There has
25 to be by human error in there, when I put it together.

2 Q With due allowances for the fallibility of
3 human beings, do you know at this moment of any other errors
4 in this narrative?

5 A What do you call an error?

6 It doesn't tell the entire whole story.

7 Q Do you know now about anything that you put in
8 the narrative which is different from what you told his
9 Honor and the jury in this case?

10 A I don't recall in substance, no, sir.

11 Q Would you say that there is nothing there, that
12 this represented your best and most accurate recollection
13 in November 1973?

14 A At that time, yes, sir.

15 Q You don't know of any other errors in it?

16 A There may be some small, minute errors, but I
17 don't recall, I am sorry.

18 Q So we have it, then, you told the story to
19 Doonan in May, put it narrative in November, and when was
20 the next time you told the tale, you told what you remembered
21 about --

22 A Tale, sir?

23 Q I'm sorry, I withdraw that -- you told your
24 recollections of what happened with Training With The Pros,
25 after November, after the narrative?

2 A After November, I believe I was called into a
3 grand jury by Mr. Sorkin and asked some questions about
4 Training With The Pros. It was a short grand jury.
5 I don't recall the grand jury conversation.

6 Q Let me get something straight, sir, and I
7 am emphasizing this --

8 MR. GOULD: I ask your Honor's indulgence for
9 the repetitious character of the question, but I think
10 your Honor will see that I am justified.

11 Q It is your sworn testimony that you came back
12 to the United States in May, that you talked with Doonan,
13 and that nobody asked you about Training With The Pros
14 until sometime in November when you wrote the narrative?

15 A No, I did not say that. I said I may have talked
16 to others, I may have even been in a grand jury appearance
17 and made a statement about Training With The Pros.

18 Q I want you to tell me yes or no, did you have
19 conversations with anybody in the Government about Training
20 with The Pros between May, when you spoke to Doonan, and
21 the time that you wrote the narrative?

22 MR. SORKIN: Your Honor, I object. I think he
23 answered that on several occasions.

24 A I just don't recall. I may have. They were not
25 extensive --

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2 Q Very few?

3 A Very few and very minute.

4 Q If you had any conversation on this subject
5 with anybody between May and November, they were very few
6 and very minute?

7 A In my mind, yes, sir.

8 Q Well, you are sure about that now, aren't you?

9 A Yes, sir.

10 Q You are testifying to the truth, aren't you?

11 A To the best of my knowledge, yes, sir.

12 Q How long after you prepared and signed this
13 narrative, how long after that did you go to the grand jury
14 on Training With The Pros?

15 A Very soon thereafter, but I don't remember.
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rmb-1

D'Onofrio-cross

Q When you went on Training With the Pros to the grand jury, do you remember being asked these questions and giving these answers, in the grand jury on November 19, 1973?

MR. SORKIN: May I have the page?

MR. GOULD: RSK4.

"Q And that was split amongst you" -- this is Sorkin questioning you -- "that was split amongst you, Mr. Stoller and Mr. Allen, each of you paid out that much which you owed for expenses such as Mr. Herbert?

"A And some others.

"Q And some others. Now, you and I, Mr. D'Onofrio, have met in my office on numerous occasions, is that correct?

"A Yes."

That is on November 19, 1973. Did you give those answers to those questions?

A Yes, sir.

Q And had you met in his office on numerous occasions?

A Yes, sir.

Q And did you in the course of those numerous occasions discuss Training With the Pros?

A On some, but very few.

Q How many?

rmb-2

D'Onofrio-cross

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A I said I don't recall.

Q Do you remember what you said in the grand jury?

A No, sir.

Q Do you remember whether it was 10 or 13?

A I don't recall.

Q Or 20?

A I don't recall.

Q Could it have been 10 or 15 or 20?

A I answered you that I do not recall. You could say it could be a thousand and I still don't recall.

Q Were you asked this question and did you give these answers:

"Q And we have discussed Training With the Pros, among other things, is that correct?

"A That's correct."

That is right after questions and answers I read you before.

A Yes, sir.

"Q You gave that answer. Am I correct, Mr. D'Onofrio, that in the course of our conversations I asked you many more questions both about Mr. Stoller, Mr. Allen and Training With the Pros in addition to other things that I have asked you before this grand jury today?

A Yes."

rmb-3

D'Onofrio-cross

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Q You were asked that question and gave that answer?

A Yes.

Q The fact is, between May and the day you appeared before the grand jury you had a number of conversations with Sorkin, didn't you?

A Yes, sir, but limited.

Q How many?

A I cannot recall, sir.

Q Well, give us your best estimate.

A I cannot even given you a best. Maybe 5, maybe 4, maybe 6.

Q Could it have been 10 or 20?

A Then you could say could it be a thousand. You are trying to nail me down to a date on these discussions and we met on many subjects and many subject matters were discussed at one time, and if during the course 90 per cent of it could be another case and he would say, "By the way, on Training" -- so on and so, and I cannot recall that, sir.

Q When you met with him on numerous occasions and discussed Training With the Pros--

A Take the dictionary version of "numerous" and I will concede to that.

MR. SORKIN: Your Honor, I object, because after that it says "among other things" and I don't see anything

rmb-4

D'Onofrio-cross

consistent with what he testified to.

THE COURT: Mr. Sorkin, the jury will decide this.

Q I want to know your best estimate of how many times. First you said none, remember?

THE COURT: I want to know, so we all know, are you asking him now how many times he conferred with Sorkin or are you asking him how many times did he confer between May and November with Sorkin about Training With the Pros?

MR. GOULD: That is all I am trying to get --

MR. SORKIN: Or Doonan.

THE COURT: No, no, please --

MR. GOULD: About Training With the Pros, that is all I am interested in.

THE COURT: I want to make sure he understands and the jury understands and I want to make sure the lawyers understand it.

THE WITNESS: Now I understand it.

Q I want to know how many conversations you had either with Sorkin or Doonan or Greene or anybody else connected with the Government between May, when you came back, and November when you wrote the narrative?

A Between 5 and 8 or 5 and 10, but some lesser than the others --

rmb-5

D'Onofrio-cross

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Q Were notes made of those conversations?

3

A I don't recall. I know Mr. Doonan made notes.

4

Q How about Mr. Sorkin, did he make notes?

5

A He may have made some notes, too.

6

Q You saw him make some notes, didn't you?

7

A I don't recall seeing him make the notes, but he generally makes notes.

9

Q Between May and November, he generally makes notes?

10

A He generally makes notes.

11

MR. GOULD: Could I have the notes, Mr. Sorkin?

12

MR. SORKIN: You have them, Mr. Gould. I will

13

direct your attention to the appropriate number. 501K, six.

14

THE COURT: As I understand it, Mr. D'Onofrio, in that period of time when you returned from the United Kingdom to New York, you were coming down here a great deal and spending all your time talking when you did come here with Sorkin and Doonan?

19

THE WITNESS: And a lot of other U.S. Attorneys.

20

THE COURT: Who were the others, do you remember?

21

THE WITNESS: Oh, God, Mr. Velie --

22

THE COURT: Franklin Velie?

23

THE WITNESS: Mr. Gordon.

24

THE COURT: John Gordon.

25

THE WITNESS: I spoke to Mr. Gordon. I spoke to

1 rmb-6

D'Onofrio-cross

2 Mr. Wilson, I spoke to Mr. Ruy Giuliani in the Corruptions
3 Division at the time --

4 THE COURT: Please keep your voice up.

5 THE WITNESS: I spoke to I think Mr. Giuliani,
6 who was head of the Corruptions Division. He is a U. S.
7 Attorney, I think, but maybe not with that division any more.

8 I spoke to a Mr. Wilson. I remember them by
9 cases, not the U. S. Attorney's name so much.

10 THE COURT: There were quite a few?

11 THE WITNESS: Many, many.

12 THE COURT: I gather that you spoke --

13 THE WITNESS: Mr. Higgins.

14 THE COURT: -- about many other cases than Training
15 With the Pros?

16 THE WITNESS: I never had Training With the Pros
17 on my mind.

18 THE COURT: My question is, did you discuss other
19 cases including stock manipulations, etc?

20 THE WITNESS: All types of crimes.

21 THE COURT: With --

22 THE WITNESS: Other U. S. Attorneys.

23 THE COURT: What about with Ira Sorkin, this man?

24 THE WITNESS: I had many visits with Mr. Sorkin
25 not only on Training With the Pros, but on other stock manip-

ulations.

THE COURT: All right. Forgive me, Mr. Gould. Go ahead.

BY MR. GOULD:

Q Now, sir, so that when you drew this narrative you had a number of conversations with Mr. Sorkin on which he made notes?

A Of Training With the Pros?

Q Only Training With the Pros. That is all I am interested in. You had had a number of conversations with him, right?

A Yes, sir.

Q And in those conversations you talked about what happened in Training With the Pros?

A Yes, sir.

Q You had told him in these five or six conversations that you say you remember now everything you could remember about Training With the Pros, right?

A Each time I could remember a little more.

Q I see. So that by the time you got to write this narrative, you had had five or six sessions with Sorkin, at least two sessions with Doonan over a period of approximately six months, and then you sat down to write the narrative?

rmb-8

D'Onofrio-cross

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A That is correct.

2

Q That is the way it happened, right?

3

A Yes, sir.

4

Q And the narrative, Exhibit 501CC, represents what you remembered in November 1973 after six sessions with Sorkin, the two sessions with Doonan, and your own reflections?

7

A Yes, sir.

8

Q But you still wanted the right to change things?

9

A Wanted the what?

10

Q The right to change the narrative?

11

A Because I had no concentrated on the case at all, and I gave you the reason. So, as I was talking to them and they were making notes, I was in never, never land, not even thinking about it.

12

13

14

15

Q What do you mean?

16

A I was thinking about the other U.S. Attorneys and other crimes and things I am involved with.

18

Q You are not in never, never land now?

19

A Absolutely not.

20

Q You are concentra ting?

21

A You darn right.

22

Q When you said before that when you sat down to do this narrative you had no preparation, that was an error, was it not?

23

24

25

1 rmb-9

D'Onofrio-cross

2 A Well, I considered it no preparation.

3 Q You mean two sessions with Doonan and about six
4 sessions with Sorkin, that was no preparation?

5 A They are limited sessions as to what was involved
6 with Training With the Pros, and I considered it little or
7 no preparation.

8 Q How long were you with Sorkin, just a few minutes,
9 you say?

10 A No. Sometimes I was with him an hour, sometimes
11 two hours, but we didn't discuss Training With the Pros --

12 Q How about three hours --

13 MR. SORKIN: I ask he be allowed to finish the
14 answer.

15 Q Yes, you finish your answer.

16 A Sometimes I was with him for an hour and we dis-
17 cussed it ten minutes out of an hour.

18 Sometimes we spent one or two hours on this
19 subject, then two hours on another subject, sometimes we spent
20 an hour on this and four hours on another subject, sometimes
21 we spent three hours on this and the rest of the day on
22 another subject.

23 (Pause.)

24 MR. GOULD: What is the date on that?

25 MR. SORKIN: On the first 16 pages, I can only

1 rmb-10

D'Onofrio-cross

2 tell you it was subsequent to the last three of 11/15/73.

3 It is an accumulation of notes.

4 MR. GOULD: You will agree this represents 16
5 pages of notes?

6 MR. SORKIN: No, I will not. What I am represent-
7 ing to you is that it contains 16 pages followed by three
8 additional pages and the last three pages are 11, 15 --

9 MR. GOULD: These first 16 pages you agree were
10 not done on November 19?

11 MR. SORKIN: I don't believe they were.

12 MR. GOULD: You don't know when they were done?

13 MR. SORKIN: No, but they were well past 11/15/73.

14 MR. GOULD: How do you know that?

15 MR. SORKIN: Your Honor, am I being asked as a
16 witness? I am trying to help Mr. Gould and I am being cross-
17 examined.

18 THE COURT: May I suggest that we will now break for
19 luncheon and I think you two better have your tete-a-tete out
20 of our presence and we will resumed at 2:15.

21 (Luncheon recess.)

22 -----

gab-1

AFTERNOON SESSION
2:15 P.M.

(In open court; jury present.)

R A M O N N. D ' O N O F R I O resumed.

MR. GOULD: I gather those other people are not coming in.

THE COURT: I was just going to ask the same question.

MR. SORKIN: They are in no immediate rush to get back. They have agreed to come back tomorrow morning. I thought Mr. Gould could continue with his cross, your Honor.

THE COURT: All right.

CROSS-EXAMINATION (continued)

BY MR. GOULD:

Q Mr. D'Onofrio, do you remember testifying in this case about being present at a time when Mr. Stoller was with you and he called a lady, he called Eleanor Wein? Do you recall that?

A Yes, sir.

Q And you were asked -- I am reading from Page 286 of the transcript. You were asked a question:

"Q Tell us, please, what Mr. Stoller said.

"A He said, 'Eleanor, dear, this is Phil,' and she said, 'Hello'".

1 gab-2

D'Onofrio-cross

2 I think you were on the phone, weren't you?

3 A I was on the other phone, yes.

4 Q "What can I do for you today, Phil?"

5 He says, "Eleanor, you have to get in on this
6 Training With the Pros deal right now. The stock is at the
7 lowest level you are ever going to see it again, 55 or 57.
8 You better start buying it right now for your clients. It
9 is another Franklin Mint," and so forth and so on.

10 You remember that? I am reading that so you can
11 refresh your recollection.

12 A Yes.

13 Q Now, sir, in the narrative that you prepared back
14 in November 1973, you don't mention anything about that,
15 do you?

16 A There is a lot of my testimony that I have given
17 that is not in that narrative.

18 Q The answer to my question is, no, that's right,
19 isn't it? You don't mention it in the narrative?

20 A I do not mention it.

21 Q You remember it? You remember now that you don't
22 mention it in the narrative?

23 A Yes, sir.

24 Q In fact, you didn't think of it when you wrote
25 the narrative, is that correct?

1 gab-3 D'Onofrio-cross

2 A That's correct, sir.

3 Q And then something reminded you of it, and when
4 you were responding to Mr. Sorkin's questions, you remembered
5 it and you told the whole conversations?

6 A Reminiscing thereafter many times, yes, sir.

7 Q Yes. You discussed --

8 A In fact, the conversation may not still be
9 precise in the testimony I gave here; in substance.

10 Q You remember the exact words, do you not?

11 A I never remember exact words, I remember substance,
12 sometimes agjectives or adverbs.

13 Q You said in your testimony, he said, Stoller --

14 A I remember calling her dear, yes.

15 Q He said, "Eleanor, dear, this is Phil," and she
16 said "Hello. What can I do for you today?"

17 You remember that, don't you?

18 A My best recollection.

19 Q The exact words?

20 A I don't know if it is exact words, sir.

21 Q But you testified that you were giving the exact
22 words, didn't you?

23 A I testified that was my best recollection of what
24 was said and that was the conversation. Exact words, I
25 would have to be a genius to remember ifs, ands and buts and

1 gwb-4 D'Onofrio-cross

2 boos. I am not a genius.

3 Q You tell me now --

4 A Substance.

5 Q Will you please tell me now after I have directed
6 your attention very carefully to this conversation, which
7 you described only 48 hours ago --

8 A Yes, sir.

9 Q You tell me now what he said to her and she said
10 to him, the exact words as you now remember them.

11 A It will still be my best recollection.

12 Q Yes, of course.

13 A "Eleanor, dear, this is Phil."

14 She says, "Yes, Phil. What can I do for you
15 today?"

16 He says, "Eleanor, I want you to get in on this
17 Training With the Pros stock. It is about the lowest level
18 you are ever going to see it. It is about 55 or 60 right
19 now and it is going to be another Franklin Mint. It is
20 going to be going to 80 and even beyond that."

21 She said, "I'll see what I can do. I will do
22 the best I can do to get into this, but I can't promise any-
23 thing."

24 Q She said, "I will see what I can do," that is
25 your best recollection? ..

1 gab-5

D'Onofrio-cross

2 A My best recollection.

3 Q Did she say "Let me put my house in order and
4 see how much I can buy"?

5 A It is what I testified to yesterday or the day
6 before yesterday.

7 Q But you didn't testify to that just now, did you?

8 A No, that's correct.

9 Q All right. What happened after that?

10 A I am not a memory expert, Mr. Gould.

11 Q You tell us your best recollection today of what
12 you testified to 48 hours ago about that conversation.

13 A Then -- you mean in that context, what happened
14 then next?

15 Q The words that you testified to 48 hours ago.
16 Go on, you had more, didn't you? That isn't where the con-
17 versation stopped, was it?

18 A With Eleanor Wein?

19 Q Eleanor Wein. That is all we are talking about.

20 You are on the phone with Stoller and Eleanor Wein
21 and Stoller is trying to get her to go into the stock and
22 you are telling us what he said to her and she said to
23 him.

24 Tell it to us again.

25 After she said, "Let me see what I can do," or as

1 gab-6 D'Onofrio-cross

2 you said the other day, "Let me put my house in order,
3 I can't promise anything."

4 What was the next thing that happened?

5 A The next thing I recall, I told him that I had
6 put -- I don't know if this precedes this or aftercedes
7 it.

8 I had put Baer, Wald & DeBoer on it, another member
9 firm and, Jerry, what were you doing about it. He says he
10 was trying to get Brad Thurlow into it.

11 I said, "You boys seems to be doing nothing and I
12 am doing everything."

13 Q You didn't tell us that the other day, did you,
14 that part of the conversation?

15 MR. SORKIN: Objection, your Honor. I think it
16 is --

17 THE COURT: I will say that we will let the jury
18 recall that one.

19 Q Do you remember whether you said that?

20 A Yes, I remember I said that.

End 1A PM 21

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Q Do you remember that you said that?

A I thought I did.

Q When you finished with the conversation with Elinor Wein, you and Stoller on the phone, what did Stoller say? What were the words that he used?

A I recall him saying "Don't worry, she is going to be buying a lot of it or a bundle of it," or something like that.

Q The other day when you testified you said she says, "Let me put my house in order and see how much I can buy. I can't promise anything, but I will do the best I can."

He got off the phone and he said, "That is good for at least 2,000 or 3,000 shares, Ray."

Isn't that what you said the other day?

A Yes, sir.

Q That is different from what you just said, isn't it?

A It is different in words but not in substance.

Q The substance is the same?

A The substance is the same.

Q I see.

You testified the other day about a meeting between yourself, Stoller and Elinor in October 1969, and it was about the time that you learned that Bonavia had been

2 called by the United States Attorney's office. Do you
3 remember that?

4 A Yes, sir.

5 Q You got it clearly in mind?

6 A Not clearly, but almost clearly.

7 Q You remembered it two days ago, didn't you?

8 A I said I remembered it. Ask me your question.

9 Q Now, would you be good enough to tell me, if
10 you can, who opened the conversation?

11 A You are referring to an October meeting
12 in 1968 with Phil Stoller, Jerry Allen and myself at my
13 office on 136 East 57th Street, sir?

14 Q Yes, sir.

15 A Okay. I believe Jerry Allen opened the meeting
16 by coming -- by saying to me, "Ray, we have got a big problem
17 with Joe Bonavia. He wants all his money back."

18 And Phil interceded by saying, "Fuckem. I'm
19 going to bury that son of a bitch if he says anything to
20 any of the Department of Justice or people about anything
21 we are doing."

22 Jerry interceded and says, "Please, Phil don't
23 talk like that."

24 And Phil said in return, Fuckem. I'll hire some-
25 body for \$15,000 and have him run over by a truck."

I says, "Please, Phil, don't talk" -- I'm an Italian."

I says --

Q You said to him you are an Italian?

A Yes, I'm an Italian, but by nature I'm not that kind of a person you are indicting."

I said, "My walls have ears. Let's not have any more conversation like that."

Jerry says to Phil, "what are you worried about anyway? We have plenty on Joe Bonavia anyway."

Then we talked further about giving him some shares of lettered stock, 50,000 shares of lettered stock.

Is that the conversation you are referring to?

Q Yes, that is the conversation. You remember it very well now, don't you?

A I don't know. You have got the papers. I may be different --

Q Mr. D'Onofrio, you have just repeated now that you said on Monday, haven't you?

A I don't know if it is word for word.

Q How many times --

A Substance.

Q How many times have you repeated the exact words that you uttered here today? --

2 A The exact words?

3 O Yes.

4 A I think I repeated them similarly to you the
5 other day.

6 Q To me?

7 A No, excuse me, Mr. Sorkin or to the Court.

8 O Before that how many times had you repeated those
9 words?

10 A Once maybe or twice to Mr. Sorkin.

11 O I see.

12 But that --

13 A Even then it might have been different.

14 O What you told was not in your narrative back in
15 November, is it?

16 A That is correct.

17 Q You left it out?

18 A I said there is so much left out of that narrative.
19 That is a little page. The first brief is three times that
20 size.

21 Q The first brief?

22 A The first book you got there from the other day,
23 it is three times the size of my narrative.

24 Q You mean this testimony, this transcript?

25 A Yes. So it is certainly --

Q When for the first time did you tell anybody about this conversation at which Stoller was going to have Bonavia, have him run over by a truck for \$15,000?

A I guess I told them this, to the United States Government, a couple of months ago or something like that, a month ago.

Q You mean it wasn't dredged up in your mind until a couple of months ago?

A No, sir.

Q That was the first time you remembered that?

A I recall that particular part of the conversation.

Q And I suppose the same is true about the conversation with Mrs. Wein because you hadn't mentioned it in your narrative?

A No, I recall that a lot earlier.

Q How much earlier?

A I recall that at about a month after the narrative.

Q Did you tell them about it a month after?

A If we were interviewed at that time, it would probably show on their notes when I did remember that.

Q But you don't know --

A I don't recall the exact date, no, sir.

Q But this one you only remembered a couple of months

ago and then you told it to him, and a couple of months ago you remembered every word that was said, correct?

A Not every word, just the substance.

O You said you remember these words that this man used --

A Some of the words I remember.

O Some of this dirty language, you remember him saying all that?

A Yes.

O Now, sir, you remember that in January 1974 you were taken before the grand jury to deal with the question of Training With The Pros, and I am referring to 3501-F, and the purpose of that, was it not, to correct your narrative, isn't that what you remember?

A Certain portions of the narrative, sir.

O When you appeared before the grand jury in January 1974, you were under oath, weren't you?

A Yes, sir.

O And you had sworn to tell the truth, and you knew that if you didn't you would be committing perjury?

A Yes, sir.

O Correct?

A Yes, sir.

O And then they showed you before the grand jury this

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paper, which is Exhibit 3501-CC, the 16-page document that
you signed in December 1973 or thereabouts?

A November, was it?

O November, 1973. They showed you that paper,
didn't they?

A Yes, sir.

O And you were asked this question, weren't you --

A By whom, sir?

O By Mr. Sorkin.

MR. SORKIN: Excuse me, Mr. Gould. Page,
please?

MR. GOULD: Right on the front page, right in the
beginning of that, 3501-f.

2 Q "Q Am I correct, Mr. D'Onofrio, that this
3 document was prepared by you at the request of myself and
4 Mr. Thomas Doonan of the United States Attorney's office?

5 "A That is correct.

6 "Q Am I also correct that when you prepared this
7 document you were basing your recollection of the events
8 that had transpired and you did not have before you certain
9 documents such as transfer records and so forth to refresh
10 your recollection?

11 "A That is correct, I had no supporting documents."

12 MR. GOULD: I will skip the next question and
13 answer, if you have no objection, Mr. Sorkin --

14 MR. SORKIN: For the sake of completeness, why
15 don't you go through it?

16 "Q Other than your own immediate documents such as
17 a work sheet?

18 "A Some work sheets and very little documentation.

19 "Q Now, am I correct, Mr. D'Onofrio, that since
20 you prepared this document you and I have sat down, we
21 have gone over the documents and in certain areas I
22 asked you specific questions about statements that
23 you made in the documents and you reviewed certain records
24 that were in my possession and certain records that you
25 came to acquire and you made certain corrections on this

document?

"A Yes, there were corrections made."

You remember being asked those questions and giving those answers?

A Yes, I do.

O And so we have it pretty clearly that it was your purpose at that time on the basis of study and care and the examination of the documents to correct this narrative? That is what you said and you said yes?

A Correct.

Q But in correcting the narrative you forgot about Elinor Wein?

A We didn't expand it, we just corrected it.

Q You didn't add anything?

A I don't know if we added anything. I don't recall. We may have added one or two things.

Q You never mentioned the Elinor Wein conversation?

A I don't think I did, no, sir.

Q And you never mentioned this meeting in which Bonavia was going to be assassinated for \$15,000 --

A No, sir, run over by a truck.

Q Never mentioned that?

A And a lot of other things were not mentioned.

O Do you remember what else you didn't mention?

1
2 A If you compare the documents of my testimony to
3 that you will see there is obviously a great deal more.

4 Q Oh, well. That was back in 1974, early part of
5 this year.

6 A That is correct, sir.

7 Q Didn't you tell us a little while ago that you
8 remembered the Wein conversation in December of 19 --

9 A No, I said soon after the document -- sooner after
10 the document was written than I remember the incident about
11 the threatening of Mr. Bonavia.

12 Q You said a little while ago, less than 20 minutes
13 ago, you remember the Wein conversation after you prepared --

14 A A month or so after.

15 Q What was a month or so after, before or after
16 you testified before the grand jury?

17 A It was probably before, but, as I say, we didn't
18 expand the document.

19 Q You didn't think it necessary to mention it in the
20 grand jury?

21 MR. SORKIN: Objection, your Honor.

22 A I wasn't asked.

23 MR. SORKIN: Thank you, Mr. D'Onofrio.

24 Q You were asked, were you not, to make any corrections
25 changes, additions that you thought were necessary in

there? Isn't that what you were being asked to do?

A But I wasn't asked for he said, who said, who, when, why, where.

Q Other than in this courtroom yesterday -- the first day you were here, excuse me -- have you ever told this story about the Bonavia episode to anybody except Mr. Sorkin and Mr. Doonan?

A The Bonavia story --

Q The threats, about Stoller having him run over by a truck?

A Yes, I have told it to someone else.

Q Who?

A I think I discussed it with my wife, my former wife.

Q With your former wife?

A I had a visit with Mr. Bonavia at another time which Mr. Sorkin didn't discuss in direct, in Las Vegas --

Q I just want to know whether you told this story to anybody.

A You mean in the Department of Justice?

Q Well, yes.

A I told you my ex-wife was familiar with the fact.

Q She doesn't work for the Department of Justice.

A No.

2 Q O the CIA?

3 A No.

4 Q But you told it to your ex-wife. Other than your
5 ex-wife, did you tell it to anybody?

6 A I told it to Mr. Herbert, to Mr. Ballmer, I
7 told all the bank officials when they were worried when
8 he started suing the bank.

9 Q When who started suing the bank?

10 A Mr. Bonavia.

11 Q You told them the story?

12 A They asked me for help in defending themselves
13 in the suit.

14 Q Did you tell them the story about a meeting in
15 which Stoller said he was going to have Bonavia hit by a
16 truck?

17 A I told them "Stoller has threatened to kill him,
18 so don't worry" --

19 Q Kill whom?

20 A Bonavia.

21 Q Did you ever tell that to anybody, about the
22 truck and the \$15,000, before you sat in this courtroom?

23 A Yes.

24 Q Who?

25 A Mr. Sorkin and Mr. Doonan.

2 Q When for the first time did you tell it to them?

3 A About a month ago, month and a half ago.

4 Q So you remembered that one about a month ago?

5 A Yes, sir.

6 Q All the time between November 8, 1973, when you
7 signed this paper and a month ago, with all the meetings
8 you had with him, you never remembered about that conversa-
9 tion until a month ago, is that right?

10 A No, sir, I didn't.

11 Q It just passed from your mind?

12 A I will remember a lot of things a month from now
13 that I am not remembering today about this case.

14 Q I think so, too. I agree.

15 A You can't remember everything.

16 Q Yes, indeed.

17 Q You remember testifying, do you not, in this
18 courtroom, about a conversation between yourself and
19 Bonavia?

20 A Yes, sir.

21 Q Do you remember that?

22 A Yes, sir.

23 Q Let me give you a page reference --

24 A You don't have to, sir.

25 Q Page 304 --

A I am sorry. You are talking to Mr. Sorkin?

MR. GOULD: Page 304.

"Q Mr. D'Onofrio, tell us, please, what you said to Bonavia and what he said to you?

"A Joe Bonavia came about an hour before the other meeting. He said, 'Ray, I want to speak to you alone.'

I said, 'What is up, Joe?' He says, 'I'm worried.'

I said, 'What are you worried about?' He says, 'I think Phil is going to kill me. I am very much afraid of him.

If I go to the garage or talk to anybody, he will kill me --"

A The garage, sir?

Q That is what it says here.

A The grand jury. Even the court reporter makes mistakes. At least we are all human.

MR. GOULD: I am going to change it physically, with your Honor's permission.

MR. SORKIN: I consent to that, your Honor.

BY MR. GOULD:

"'If I go to the grand jury or talk to anybody, he will kill me. They want me to use Marty Frank for my lawyer for my problems with the United States Attorney's office.'

"Q Did he say who 'they' were?

"A Phil and Jerry."

You remember that?

A Yes, sir.

Q You remember the rest of the conversation, don't you, the rest of what Bonavia said?

A He wanted a lawyer and I went and hired one.

Q No, no, no.

A You mean on the second meeting?

Q No, the same meeting. After he said, "They want me to use Marty Frank as my lawyer for my problems with the United States Attorney's office," you were asked:

"Q Did he say who they were?

"A Phil and Jerry and then Mr. Sorkin said go ahead and I went ahead.

"Q Now, I want you to go ahead and tell me the rest of the conversation.

"A The rest of the conversation was I believe I said I went to the phone to call Professor Duke in order to get him a lawyer and I then returned from the phone and told him that I have a very good lawyer named Pat Wall, just out of the office of Edward Bennett Williams, he is a very big trial lawyer, and I don't think he would have to worry, that he is a darn good lawyer and he will be in good hands."

Q You are sure that was what was said?

A In substance.

Q Well, now, sir, the other day when you were

1 questioned about this conversation and Mr. Sorkin said,
2 "Go ahead," you said that Bonavia then made another
3 statement. Don't you remember that? Not about the lawyer,
4 about something else?
5

6 A I don't recall at this time.

7 Q You remember the conversation, don't you?

8 A I says in substance, sir.

9 Q You didn't tell us that the other day, did you,
10 you said you knew the words?

11 A To the best of my recollection.

12 Q And I want your recollection right now as to what
13 it was that Bonavia said after the part of the conversation
14 in which he said, "They want me to use Marty Frank as my
15 lawyer for my problems with the United States Attorney's
16 office."

17 A He says, "I don't want to use Marty Frank. I don't
18 trust Marty Frank. He is their lawyer, not mine."

19 Q That is what he said?

20 A That is my best recollection.

21 Q Anything else?

22 A There could be something else, but I can't recall.

23 Q But you don't remember it now?

24 A No.

25 Q You remembered it Monday, didn't you?

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D'Onofrio-cross

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2 A He made the mistake Monday or someone else did
3 on the word grand jury, so please don't chastise me for
4 making mistakes in between.

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Q I don't want to take advantage of any mistakes, I just want to know whether you really honestly know what Bonavia said?

A In substance, yes.

Q On Monday you didn't tell us substance, you said the words, didn't you?

A I just said the words again.

Q No, you tell me again what the words were that Bonavia said, the whole conversation from that point on, what you said on Monday under oath Bonavia said, the words.

A Where do you want me to begin?

Q At the point where you answered in response to Mr. Sorkin's question, "They want me to use Marty FRank as my lawyer for my problems with the United States Attorney's office."

Did he say who they were?

A Phil and Jerry.

"Mr. Sorkin: Go ahead," And you knew what he meant when he said go ahead?"

A To continue the conversation.

Q And I want you to repeat it for this jury the way you did it the other day when he said go ahead.

A Mr. Bonavia said, "They want me to use Marty Frank and I don't want to use Marty Frank because Marty is their

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D'Onofrio-cross

2 lawyer and I don't want their lawyer, I want a lawyer of my
3 own. I am afraid" -- I think he said, "I am afraid of
4 my life."

5 I may not have said that the other day.

6 Q That is something you just remembered, that he
7 said, "I am afraid for my life"?

8 A I think he may have said that.

9 Q Tell us what else you think he may have said.

10 A Could I please get him a lawyer he could trust
11 and that would not be in communication with Phil and Jerry.

12 Q You are sure that he used the phrase, "who will
13 not be in communication" --

14 A I am not sure he used those words.

15 Q Well, you just said it.

16 A I know, but I am not sure I used those words the
17 other day.

18 THE COURT: Can we go ahead and complete this?

19 MR. GOULD: Yes, your Honor, I am almost finished
20 with it.

21 Q The rest of the conversation was he asked you to
22 get a lawyer and you called Professor Duke and Professor
23 Duke told you to call Pat Wall or get in touch with Pat Wall?

24 A Correct.

25 Q And you told Bonavia, "I got a great man for you,"

1 in substance, "Pat Wall used to be with Edward Bennett
2 Williams."

3
4 A Yes, sir.

5 Q You told it to him in that conversation?

6 A Yes, sir.

7 Q And that is what you told us the other day?

8 A I think I did, sir.

9 Q You think you did. With respect to the next
10 conversation, and I am referring to Page 307 of the transcript,
11 you testified then that the meeting you had with Bonavia was
12 about 20 minutes before Stoller and Allen came in, correct?

13 A Yes, sir.

14 Q And it was in that conversation that Stoller said,
15 as I remember your testimony, something about Stoller
16 threatened to bury Mr. Bonavia. You used the word "bury."

17 A Yes.

18 Q And you remember he said bury.

19 A I recall it, sir.

20 Q That conversation is not in your narrative, is it?

21 A No, sir.

22 Q And it is not in the grand jury testimony, the
23 one in January of '74 when you corrected the narrative?

24 A I had not recalled it at that time, sir.

25 Q But you did in that grand jury testimony describe

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D'Onofrio-cross

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the conversation?

A Perhaps I didn't describe it completely, sir.

Q You don't remember what you said?

A No, sir.

MR. SORKIN: Is that still the grand jury testimony?

MR. GOULD: Still January.

Q In plain English, you didn't put it in your narrative and you didn't put it in the grand jury, the threat to bury?

A Not that I didn't put it in, I wasn't asked the question.

Q You didn't tell anybody about that conversation in the narrative, did you?

A The grand jury is a question and answer program. You don't narrate, like I am not allowed to narrate with you.

Q Mr. D'Onofrio, the testimony, the story, the recollection about Stoller threatening to bury Bonavia is not in your narrative?

A That's correct.

Q And then after the narrative you had a number of sessions with Sorkin and Doonan and other people in which you refreshed your recollection and then you went before the

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2 grand jury on January 10, 1974, and you added or corrected,
3 right?

4 A The narrative, yes, sir.

5 Q But you didn't mention the threat of Stoller to
6 bury Bonavia?

7 A No, sir.

8 Q When for the first time did you think of that one?

9 MR. SORKIN: Your Honor, I object. He has testi-
10 fied to that on several occasions. I think he said it
11 was about a month ago.

12 THE WITNESS: About a month ago.

13 THE COURT: By this time I wouldn't be sure, but
14 rather than argue, let's ask him.

15 THE WITNESS: About a month ago.

16 Q When for the first time did you mention that con-
17 versation to anybody?

18 A About a month ago.

19 Q That is something else that occurred to you about
20 a month ago. Then there was a meeting, was there not, in
21 February or March 1971, and I am referring to testimony
22 which appears at Page 310 of the transcript, and as I under-
23 stand it, you testified that Stoller said, "I am going to
24 tell you something, Mr. D'Onofrio, if you mention anything
25 at that trial about Phil, Jerry, Training With the Pros, or

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D'Onofrio-cross

2 anything else, I am going to bury you." You looked at
3 him and said, "You are going to bury me?"

4 And he says, "Yes," and so on, and you remember that
5 testimony?

6 A Yes, sir.

7 Q You gave the exact language there, right?

8 A As best as I could recollect.

9 Q Then you said "I rapped him in the mouth."

10 A Yes, sir.

11 Q Then you were asked what happened then and you
12 say "I walked out of the room." That is what happened?

13 A Yes, sir.

14 Q That is not in your narrative of November 1973?

15 A No, sir.

16 Q That is not in your grand jury testimony of January
17 10, 1974, is it?

18 A No, sir.

19 Q When for the first time did you remember that?

20 A Sir, I have remembered that ever since the day.

21 Q But you never told anybody about it?

22 A I didn't think it was part or important enough,
23 something that took place years after the act, that it was
24 important enough to mention in my narrative --years after
25 the act.

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D'Onofrio-cross

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Q How many years after the act was it?

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A A couple of years.

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Q It was in February or March '71, you said?

5

A That's right.

6

Q You told about a lot --

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MR. SORKIN: I missed the last answer.

8

THE WITNESS: That is two years after the act, after the conspiracy and the crime.

10

Q You have told about a lot of things that happened in '70 and '71, haven't you?

11

12

A Yes, but I wasn't questioned as to whether I ever received threats from Mr. Stoller or asked about it by anyone. If I had been asked, I would have told them.

13

14

15

Q We can agree on one thing. You never told this story about rapping him in the mouth until about a month ago, isn't that right?

16

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A I told the story of the visit and the elements of the visit to the Federal Bureau of Investigation.

19

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Q When?

21

A A long, long time ago, when Phil visited my office. I told them he visited my office and was trying to make arrangements to get tax leniency in order to be a witness against Mr. Pfingst and wanted to have me make arrangements with him with the Eastern District of New York that he

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D'Onofrio-cross

2 would become a witness against Mr. Pfingst and he says, "I
3 can even tell Mr. Ryan the color of Mr. Pfingst's tie the
4 day he was talking about the bribe."

5 During that conversation I recalled then but
6 I did not tell the FBI --

7 Q You told us you did tell the FBI --

8 A But I recall at that time what took place and
9 he even told me he would tape the FBI, Mr. Scuderi, but I did
10 not bring it out in this conversation because it is un-
11 related to this case. If you ask me, there is more to that
12 conversation, about him taping Mr. Tony Scuderi in his child's
13 room, but it didn't relate to the case and I didn't think
14 it was important enough to mention at that time.

15 Q In dealing with my questions, don't exercise
16 any editorial powers. Just listen to the question and if
17 you can answer it, answer it and if you can't, his Honor
18 will help you on it.

19 A I am sorry.

20 Q I want to know when and where you told this story
21 about Stoller threatening you, threatening to bury you and
22 you hitting him in the mouth, when you told it to the FBI --

23 A No, sir, I said I recalled it at that time.

24 Q But you didn't tell --
25

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2 A I told them about the part of the conversation
3 that related to them about him taping them, and they knew
4 they were being taped, they said, but that is when I recalled
5 it.

6 THE COURT: Unless you object, I would like to
7 take a recess at this point. Is that all right?

8 MR. GOULD: Certainly.

9 THE COURT: We will take a recess at this point,
10 ladies and gentlemen. Mr. Gould and Mr. Sorkin, if you
11 can come over here.

12 (Discussion off the record in the robing room.)

13 (Recess.)

End 2B

1 THE COURT: All right, gentlemen.

2
3 BY MR. GOULD:

4 Q Mr. D'Onofrio, without going back over a lot of
5 things --

6 A I heard nothing of what you just said, I am sorry.

7 Q I am sorry, we will wait until things quieten
8 down. Keep in mind now these things I have been asking you
9 about, the Eleanor Wein thing, the Bonavia meetings, the
10 threats and so on. Can we agree between us that not only
11 didn't you have it in the narrative and in the January 1974
12 grand jury testimony, you appeared before the grand jury on
13 July 10, 1973, do you remember that?

14 A I don't recall it, no, sir.

15 MR. GOULD: Mr. Sorkin --

16 MR. SORKIN: I will concede that.

17 Q You appeared before the grand jury July 10, 1973,
18 November 19, 1973, January 10, 1973, January 17, 1973, and
19 the last one that we mentioned before --

20 MR. SORKIN: Excuse me, Mr. Gould. I think
21 that is January 17, 1974.

22 MR. GOULD: Excuse me, '74.

23 Q Those were your appearances before the grand jury
24 and in none of those appearances before the grand jury did
25 you mention --

gab-2

D'Onofrio-cross

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2 MR. SORKIN: Excuse me, Mr. Gould. There is one
3 other that he appeared, 3/19/74, and it is 3501H.

4 MR. GOULD: All right.

5 Q March 19, 1974.

6 MR. SORKIN: 3501H.

7 Q Let's get it clear. You appeared before the grand
8 jury July 10, 1973, November 19, 1973, January 10, 1973,
9 January 17, 1973. March 19, 1974, and in all of those you
10 were questioned about Training With the Pros, correct?

11 A Exclusively, sir?

12 Q No.

13 A I am sorry.

14 Q Not exclusively.

15 A All right. Then I accept that as correct.

16 Q All right. Can we agree, sir, that in none of
17 those appearances did you ever mention the Wein, Stoller call
18 to Eleanor Wein?

19 A That's correct, sir.

20 Q And in none of those did you ever mention the
21 meeting, yourself, Stoller and Allen at the time that Bonavia
22 had been called by the United States Attorney's office
23 when Stoller said he would have him hit by a truck and killed?

24 A That's correct.

25 Q Never mentioned it in any of them?

1 gab-3

D'Onofrio-cross

2 A In those grand jury appearances?

3 Q That's right.

4 A Yes, sir.

5 Q In none of those did you ever repeat the testimony
6 which you gave at Pages 364 and 5 of the transcript in this
7 trial, conversation between you and Bonavia in which Bonavia
8 said he was worried, according to you, because Phil is going
9 to kill me and so on?

10 A That's correct.

11 Q Never mentioned it in any of them?

12 A That's correct.

13 Q In none of those did you ever mention the con-
14 versation which is referred to at Page 307 of the transcript
15 in which Stoller threatened to bury Mr. Bonavia?

16 A That's correct, sir.

17 Q In None of those did you mention the meeting in
18 February or March 1971 in which, according to your testimony,
19 at Page 310 of the transcript Stoller threatened to bury
20 D'Onofrio if he revealed the Swiss transactions during his
21 cross-examination in the Pfingst trial?

22 A That's correct, sir.

23 Q All right. Now, sir, when you heard Mr. Stoller
24 threaten to have violence done to Bonavia, violence at one
25 point to you, that disturbed you, did it not?

gab-4

D'Onofrio-cross

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A Did it disturb me?

3

Q Yes.

4

A I think I acted on my own when he threatened me.

5

Q You hit him in the mouth?

6

A Yes.

7

Q Then you walked out of the room?

8

A Yes, sir.

9

Q What did he do when you hit him in the mouth?

10

A His eye glasses fell to the ground or to the floor.

11

Q Did he bleed?

12

A No, sir.

13

Q He didn't try to hit you back, did he?

14

A No, sir. He called up the next day and apologized

15

for his actions.

16

Q He apologized to you?

17

A For his actions to me.

18

Q I see. That is the first time you mentioned that,

19

isn't it?

20

A That's right, sir. No one asked about it before.

21

Q And then thereafter you were good friends?

22

A No, sir. We were never friends. Just business

23

partners.

24

MR. GOULD: Would you be good enough to mark this

25

for identification, please.

gab-5

D'Onofrio-cross

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(Defendant Stoller Exhibit G was marked for
identification.)

MR. GOULD: For identification. Thank you.

Q Now, Mr. D'Onofrio, have you made threats against
any of the people involved in this matter?

A Mr. Stoller.

Q Just to Mr. Stoller?

A I think just to Mr. Stoller, yes, sir.

Q Would you please tell us when and where and under
what circumstances you have made these threats to Mr. Stoller?

A After the meeting that Mr. Frank and Mr. Stoller
appeared in Zurich, Switzerland, in late '73 or early '73,
which I couldn't recall, and after I told Marty Frank to get
his ass out of Switzerland and promised me -- he promised me
he would take care of Phil and make sure he would cause no
more disturbance. The following day the bank informed me
that Marty did not attend the meeting, which means I suc-
ceeded in at least having Marty not be with him and, however,
Marty left Phil with a full power of attorney.

MR. SORKIN: May we find out who at the bank
informed you?

THE WITNESS: Mr. Ernest Ballmer and Dr. Munchman,
and another gentleman from the bank. I do not remember his
name, a president of the bank.

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Q Do you have a time when --

A I told you the day after. If you would check Mr. Frank's passport, when he left and came back, it would be that day.

Q Don't you remember what year it was?

A No, I am sorry.

Q The year?

A I said either late '72 or early '73.

Q Winter or summer?

A I said late '72, November or December, or January of '73. I don't recall.

Q This is in Switzerland?

A Winter.

Q This is in Switzerland?

A Yes, sir.

Q Tell us what happened. All I want to know is when and where you threatened Mr. Stoller?

A I am getting to that point, sir. You didn't let me finish answering.

Q I will let you finish.

A All right. So the bank was very disturbed and said I had not succeeded because even though Marty Frank didn't come to the meeting, Mr. Stoller was left with a power of attorney for Mr. Frank to act on his behalf.

1 gab7

D'Onofrio-cross

2 That didn't disturb me too much, but a couple of
3 days later the bank called me back again, Bank Hofmann.

4 Q I don't want to interrupt you. All I asked you
5 was when and where?

6 A I am getting to it, sir.

7 Q Try answering my question first, please, and we
8 will save everybody's time.

9 THE COURT: Tell him when this was.

10 A I wrote a letter after Bank Hofmann received a
11 telegram from Mr. Frank. I wrote a letter to Mr. Frank,
12 and the substance of the letter, as best as I can recollect it,
13 is: "Dear Marty: If you don't take care of your partner
14 and watch him in some way, shape or form, take care of him,
15 keep him out of my hair at Bank Hofmann -- you know I am
16 about to make a deal -- I will make a deal some day with the
17 Government. When I do get back to the Government, I am
18 going to bury him. He is your partner. I don't hold you
19 in lawyer confidence with this letter. I want you to repeat
20 it to him because he is your partner," something to that
21 effect. That letter was sent a long time ago. I have
22 never seen it since, so I cannot recall exactly.

23 Q You say it was in late '72?

24 A Or early '73.

25 Q Or early '73?

gab-8

D'Onofrio-cross

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A To the best of my recollection.

3

4

Q But you have already told us about many conversations in 1968 and 1969, haven't you?

5

A Yes, sir, but those I reviewed in my mind before.

6

7

Q Would you review in your mind so that you can conscientiously tell his Honor and the jury just exactly what threat you made against --

9

10

11

12

A I threatened to bury him with the Department of Justice. Herbert was so -- Herbert helped me create the letter. He gave me a document that showed that I could incriminate --

13

14

15

16

17

18

Q You could what?

A He gave me a document from the bank that bore Mr. Allen's and Mr. Stoller's signature. He says, "Add this to the letter. This way Marty will make -- they will know you mean business, that we don't want their asses back over here."

19

20

21

22

23

24

25

Besides the letter I enclosed a document which had their signatures on a photostat on a Swiss bank account document.

Q You remember all of this, it is all clear in your mind?

A Not all clear, no. It is the first time it has been brought to me in a couple of years. It is coming to

2 me. Keep going.

3 Q I am going to try.

4 THE COURT: That will bring us to our next subject.

5 Before we get to it, Mr. Witness, would you please
6 tell me, are we to understand you to say that the only threats
7 you recall you made was against Stoller, but it was in the
8 form of a letter to this man Frank, is that so?

9 A And I released him from confidence --

10 THE COURT: No.

11 THE WITNESS: Yes, sir.

12 THE COURT: Please, I didn't ask you that. I
13 am confused and I am only trying to clarify it.

14 THE WITNESS: Against Stoller, you are correct,
15 sir.

16 THE COURT: It was in the form of this letter to
17 the lawyer Frank?

18 THE WITNESS: Yes, sir.

19 THE COURT: And you think it was in late '72 or
20 early '73, in the winter?

21 THE COURT: All right.

22 Mr. Gould, I don't want to have to say this again
23 to your people who apparently feel free to interrupt you from
24 back there. I would ask you gentlemen no more snickers.
25 You are perfectly free to have your thoughts about what is

2 going on, but please do not interrupt your own champion here,
3 Mr. Gould, when he is examining.

4 And also I think that it could be understood
5 that we only need one person jumping up at a time to assist
6 Mr. Gould. It is a little bit confusing to the persons here
7 other than you. One at a time.

8 This does not bind you, Mr. Stoller. Of course,
9 you are entitled to slide across there. On this end, gentle-
10 men, the lawyers don't have to keep jumping up and bending
11 back and forth as much as you have in certain periods today.
12 I know you didn't mean this. I want you to keep it in mind
13 from now on.

14 Let's go ahead, and I am sure we won't have any
15 more interruptions.

16 Q Do I understand you to have said to his Honor that
17 was the only time you ever threatened Stoller?

18 A The only time to my recollection, sir.

19 Q How about Frank, did you threaten Frank?

20 A I don't ever remember threatening Mr. Frank. I
21 don't recall. I may have threatened him in the context of
22 that letter because he is his partner, he is likely to go
23 down the drain with him.

24 THE COURT: I think the question is --

25 MR. FELDSHUH: May I have that answer?

1 gab-11
2 THE WITNESS: Because he is his partner, he is
3 likely to go down the drain with him, and get the hell away
4 from him.

5 THE COURT: Before we were interrupted, other than
6 this letter I believe the cross-examiner is asking for.

7 THE WITNESS: No other time.

8 THE COURT: One thing to you, Mr. Witness. Please
9 listen to these questions. Don't offer any more than you
10 are asked. Remember, this came up and I asked you to do
11 this with Mr. Sorkin. The same rule applies with this gentle-
12 man, Mr. Gould. It will apply with Mr. Feldshuh.

13 THE WITNESS: I apologize.

14 THE COURT: Can we now go ahead and make some speed
15 here?

16 MR. GOULD: Yes, sir.

17 Q I show you this document, which has been marked
18 as Defendant Stoller Exhibit G for identification.

19 Can you tell me if that is the letter that you
20 wrote to Mr. Frank or a Xerox of it, a reproduction of it?

21 A Yes, sir, this is the letter except it is missing
22 the documents.

23 Q But you wrote this letter? You wrote it with your
24 own hand?

25 A It is not complete as to what was in it, sir.

2 Q It is all I have got.

3 A There was sample documents in it, sir.

4 Q For the moment this certainly is the letter, that
5 is all --

6 A That is part of the enclosure of the letter that
7 you just --

8 Q I want to ask a couple of questions about this
9 letter, Mr. Witness. You said before that in this letter
10 you told Mr. Frank that if Stoller didn't get off your back,
11 you were going to bury him, is that right?

12 A That's the words I thought I used, yes, sir.

13 Q What did you mean by "bury" him?

14 A I would testify against him if the United States
15 Government required or asked if I had any knowledge of any
16 crimes that he committed with me on any one or more occasions.

17 Q So you were threatening him with that.

18 What did you want him to do?

19 A Get off my back.

20 Q What does that mean, "get off my back"?

21 A Start -- stop telling the bank that Freddie and
22 I stole \$40,000 from Marty Frank.

23 Q That is what you complained about?

24 A Viciously.

25 Q Viciously?

1 gab-13

D'Onofrio-cross

2 A Yes. Viciously means with strength.

3 Q I see. Vigorously.

4 A Vigorously. That's the better word.

5 Q All right. What you mean is you were angry with Mr.
6 Stoller because he had told the bank that you had stolen
7 \$40,000 from Mr. Frank?

8 A No, that Mr. Herbert and I had stolen it.

9 Q And he had already told that to the bank, right?

10 A And he continued to do so.

11 Q You mean he kept telling them --

12 A He kept coming over every week.

13 Q You saw him when he was there?

14 A No, only on the one occasion, through the opaque
15 glass and on exiting my office I saw him.

16 Q That's what you wanted him to stop?

17 A Yes, sir.

18 Q Did you ask him for any money?

19 A Me ask Phil for money?

20 Q Yes.

21 A No, sir.

22 Q Never?

23 A Never.

24 Q I see.

25 Did you ask Mr. Frank for any money?

2 A No, sir.

3 Q When you said in the letter, and your Honor
4 will excuse the language, "I also know you talked to Feeney.
5 Tell him from me I've got him by the balls also."

6 A That is correct.

7 Q That is what you wrote in the letter?

8 A Yes, sir.

9 Q Is that right?

End 3A 10 A Yes, sir.

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1 gwrf 3b pm 1

D'Onofrio-cross

2 Q What was it that made you concerned with Mr.
3 Feeney?

4 A Because we had committed some crimes I assume
5 together also. He was making some avaricious remarks
6 that were coming back to my ears through people that were
7 seeing me in Switzerland.

8 Q So what you wanted to do was to get Mr. Frank
9 to threaten both Stoller and Feeney that if they didn't
10 leave you alone or do something you wanted them to, you
11 were going to hurt them?

12 A Stoller primarily, Feeney as an after thought
13 because Mr. Frank told me he had been speaking to Feeney
14 when I spoke to him in Zurich.

15 MR. SORKIN: I object to the word hurt them. I
16 think he said he would testify against them.

17 MR. GOULD: I don't mean physical violence.

18 Q You were going to do something against their
19 interests?

20 A Against their interests, yes, sir.

21 Q And you said at the end of it, "And Bob Morvillo's
22 offer sounds juicier daily," right?

23 A The offer he gave me sounded juicier by the day.
24 I was sorry I had refused it.

25 Q When did you write this letter we have been asking--

1 qwrf 2 D'Onofrio-cross

2 A I can't recall, sir. If you could look at the
3 postmark, you could see. It is probably the same day.

4 Q You wrote it from England, didn't you?

5 A I don't know. It may have been mailed from England.

6 Q Don't you remember writing it?

7 A I wrote it in Switzerland.

8 Q You did?

9 A Yes. If it is mailed from England, I used
10 stewardesses as couriers, to have all my mail dropped
11 from either Italy -- in fact, some mail I had dropped in
12 Foley Square that went to Brodsky. He didn't understand
13 how it got here. I used stewardesses to courier my mail --

14 Q You wrote it from Switzerland but you put British
15 stamps on it?

16 A No, I didn't use British stamps. I gave it to
17 a stewardess who had her next flight to mail it.

18 Q Why did you do that?

19 A Because I didn't want people to know I was in
20 Zurich. I was a fugitive, Mr. Gould.

21 Q You didn't mind the stewardesses knowing you were
22 in Zurich, did you?

23 A No, I did not mind them knowing it.

24 Q How many stewardesses knew you were in Zurich?

25 A Three or four.

1 gwrff 3

D'Onofrio-cross

2 Q You were afraid the mailman would find out you were
3 in Zurich, is that it?

4 A The mailman?

5 Q Yes.

6 A Swiss mailman?

7 Q Yes.

8 A I had good relationships with the Swiss police
9 at the time and had authority to stay there.

10 Q What were you afraid of?

11 A I was afraid of the Department of Justice.

12 Q You are sure you wrote this from Zurich?

13 A Yes.

14 Q So it must have been before -- what date was it
15 you went to England?

16 A March 1st.

17 Q So it was before March 1, 1973?

18 A Yes. When I gave it to somebody to mail, they
19 could have mailed it a week later, two days later. At
20 that time they had what they called bomb scare mails and
21 stewardesses were worried about taking any letters for
22 friends because they had these bombs in it.

23 Q They weren't worried about taking your letters,
24 were they?

25 A They were worried about any kind of letters.

1 gwr 4 D'Onofrio-cross

2 Q But they did it?

3 A Eventually, yes.

4 Now I find out he has the letter.

5 Q We have it that you wrote this letter then some-
6 time between what month?

7 A December -- November, December or January.

8 Q November, December '72, January '73?

9 A That is correct, sir.

10 Q Right?

11 A That is correct, sir.

12 Q How about March, could it have been March?

13 A It could have been mailed by the stewardess later.
14 I could have wrote it in February and it could have been
15 mailed a week later. You have to watch the postal
16 dates. They reverse them in foreign countries.

17 Q When you wrote this letter you said Bob Morvillo's
18 offer sounds better, juicier daily?

19 A To me, yes.

20 Q What offer did you have from Bob Morvillo?

21 A The one you spelled out to me in the memorandum.

22 Q You mean the one that is in the memorandum that
23 we were talking about yesterday?

24 A Yes, sir, the one that said I could plead guilty
25 to one count. He could not promise my any jail; if I

1 qwrf 5 D'Onofrio-cross

2 needed protective custody, he could get it for me and
3 my family and about \$800 a month income, and as the days
4 went by and the more I started to think, it sounded juicier
5 to me every day.

6 Q Morvillo never told you he would do those things,
7 did he?

8 A He said he would agree to those things in that --
9 over the telephone and in the memorandum and give me my
10 passport so I could work.

11 MR. SORKIN: That is Defendant's Exhibit B.

12 Q You are telling us now that as of the end of
13 October, November or December 1972 you had a proposal
14 from Morvillo?

15 A No, sir. I had a telephonic communication with
16 them in which he made offers to me, and the more I thought
17 about them and the more I kept living abroad, the more it
18 sounded juicier and the more I was going to call him up and
19 say I'm coming back , when can I meet you? Just what I said
20 to Marty in the letter. It sounds juicier to me every day.

21 Q Did Marty know about the offer from Morvillo?

22 A He didn't know the full extent of the offer, just
23 that I was negotiating with them.

24 Q Did Stoller know about your offer?

25 A I have no knowledge.

1 gwrf 6 D'Onofrio-cross

2 MR. GOULD: I will offer in evidence the document,
3 Stoller Exhibit G.

4 MR. SORKIN: No objection, your Honor.

5 (Defendant Stoller Exhibit G received in
6 evidence.)

xx

7 MR. GOULD: I will just read this to the jury, with
8 your Honor's permission. It will take a minute.

9 Q One question.

10 You say you released Mr. Frank from attorney-
11 client confidence?

12 A Yes, in another letter which you evidently do
13 not have.

14 Q Do you have it?

15 A I just sent it. I remember --

16 Q When you sent him this, you wanted him to show
17 this to Stoller, didn't you?

18 A That is correct. I think I recall sending him
19 another letter releasing him from all attorney-client
20 in reference to Stoller.

21 Q Mr. D'Onofrio, would you please just answer my
22 question. When you sent him this letter, Stoller Exhibit G
23 in evidence, you wanted him to show it to Mr. Stoller and
24 you wanted him to show it to Feeney, didn't you?

25 A I wanted him to talk to Feeney.

1 gwrf7

D'Onofrio-cross

2 Q You wanted him to tell Feeney what you said?

3 A That's right.

4 Q So --

5 A I wanted him to tell Stoller what I said.

6 Q If that is so, why did you write at the top of the
7 letter, "In client, counsel confidence."

8 A I didn't want him to give it to the United States
9 Government.

10 Q When you said, "in client, counsel confidence,"
11 that meant you could show it to anybody you want but the
12 United States Government?

13 A No, you can show it to Phil and -- I mean to
14 Phil Stoller or Jim Feeney, but not to any governmental
15 agency.

16 Q That is what you meant by the words "In client,
17 counsel confidence"?

18 A Yes.

19 Q Thank you very much.

20 (Mr. Gould read from Defendant Stoller Exhibit
21 G in evidence to the jury.)

22 Q Now, Mr. D'Onofrio, you have told us, have you
23 not, that this is the only threat that you ever made to
24 Mr. Stoller?

25 A The only one I ever recall, sir.

1 gwrff 8 D'Onofrio-cross

2 Q Would you think for about ten seconds and see if
3 you can recall any others?

4 A I can't recall any others, sir.

5 Q You said in the letter "For the final and last
6 time," you were not referring to any others?

7 A I was referring to a conversation I had with
8 Marty in Zurich, Switzerland when I told him to get Phil
9 off my back.

10 Q When you said, "For the final and last time," you
11 meant Mr. Frank, this is the last time I'm going to tell
12 you to do it?

13 A To tell him.

14 Q I see, good.

15 Was there another conversation in which you said
16 you wanted Mr. Frank to get out of Switzerland?

17 A Yes -- not another conversation. I think it was
18 the same conversation.

19 Q You threatened Mr. Frank, didn't you?

20 A I told him to get out of Switzerland. I was
21 advising him, not threatening him.

22 Q You said, didn't you, "Get your ass out of
23 Switzerland"?

24 A Yes, sir.

25 Q "You don't belong in Switzerland, you have never

1 qwr 9

D'Onofrio-cross

2 bee in Switzerland, so get your ass out?"

3 A I says, "I believe it is your first visit" --

4 Q Did you say that, what I just read to you?

5 A Yes, sir. Added to it, "I believe it is your first
6 visit. What the hell are you doing here anyway?"

7 MR. SORKIN: May I ask the page, Mr. Gould?

8 MR. GOULD: Page 10.

9 I am reading from the document which has been
10 marked 3501-CC. I think we are going to have to give it
11 a Stoller Exhibit number, aren't we?

12 MR. SORKIN: I have no objection.

13 MR. GOULD: I think we will have to. May I just
14 finish with it and then I'll have it marked, your Honor.

15 Q You told us before you never threatened Mr. Frank?

16 A No, that was not a threat, no, sir. I told you I
17 like him. Why should I threaten him?

18 Q When you said to him -- this is a quote from
19 your collected works here, "I said, 'Marty, number one,
20 Phil Stoller has gotten you into a lot of trouble by bringing
21 you over here. Get your ass out of Switzerland. You don't
22 belong in Switzerland. You have never been in Switzerland.
23 So get your ass out'" that was not a threat?

24 A No, sir.

25 Q That was friendly advice?

1 gwrf 10

D'Onofrio-cross

2 A It was darn good advice.

3 Q But friendly?

4 A Yes, because we were in a friendly conversation.

5 Q Not menacing?

6 A Excuse me, sir?

7 Q You were not menacing?

8 A With Mr. Frank, never.

9 Q Now, did you in that conversation threaten Mr.
10 Stoller?

11 A On a conversation with Mr. Frank?

12 Q Yes.

13 A Yes, I think I told him, too, "I'm fed up with
14 the guy. I'm up to my eyeballs with him. Keep him the
15 hell out of Switzerland. Keep him away." He just kept coming
16 back.

17 Q Didn't you say to Mr. Frank, "I'm telling you
18 one thing, Marty, if I ever get back and make my deal
19 with the United States Government, I am going to hang
20 your goddam partner for getting you to do this and for making
21 me smaller in the eyes of the bank and my friends than I am"?
22 Did you tell him that?

23 A Yes, sir, I did.

24 Q That was a threat to Stoller, wasn't it?

25 A It is the same threat as the other one.

1 gwrf 11

D'Onofrio-cross

2 Q This was at a different time from when you wrote
3 the letter?

4 A No, one was a conversation and the other was the
5 letter following it because it didn't succeed.

6 Q How long was it between the letter and the
7 conversation?

8 A I believe only a couple of -- three or four days.

9 Q I see.

10 Then you said about Mr. Stoller, "I have no love
11 for him"?

12 A I told you that, too, sir.

13 Q Yes. You said, "He is nothing but a goniff"?

14 A Yes.

15 Q What is a goniff?

16 A A thief, but beyond that.

17 Q Worse than a thief?

18 A Worse than a thief, worse than me.

19 Q Worse than you?

20 A Yes, sir.

21 Q And then you said to him, and this was also
22 I assume a friendly piece of advice, "Marty, get your
23 ass on a plane and get the hell out of here, otherwise you
24 have nothing but tzuris"?

25 A My sister doesnt' know how to spell Jewish

1 gwrf 12

D'Onofrio-cross

2 words too well.

3 Q You didn't say that Stoller would have nothing --

4 A I said that Marty is going to have nothing but
5 tzuris.

6 Q That was friendly advice, too?

7 A That is friendly advice. You are going to have
8 problems living with a goniff like that, bad company.

9 Q You were trying to protect Mr. Frank --

10 A Darn right I was. I wish he would have taken my
11 advice.

12 Q As you sit there can you think of any other
13 friendly advice that you gave either Stoller or Mr. Frank?

14 A I can't think of any, sir, at this point, no.

15 Q Would you say you never gave them --

16 A I would not say I never gave them any, but I
17 can't think of any.

18 Q Did you ever threaten them with violence?

19 A No, sir.

20 Q Did you ever threaten anybody with violence?

21 A Yes, I threatened akiyoshi Yamada once with
22 violence.

23 Q You did?

24 A Yes.

25 Q What did you threaten him with?

1 qwrf 13

D'Onofrio-cross

2 A I threatened to beat him up. I call that violence.
3 I didn't threaten to kill anybody. He owed me \$300,000
4 and welched and I threatened to beat him up.

5 Q Did you beat him up?

6 A No. Excuse me, sir. I did -- was violent with
7 someone else.

8 Q Really?

9 A Yes, sir, Mr. Feeney.

10 Q Mr. Feeney?

11 A Yes, sir, when he broke up my partnership.

12 Q I'm so sorry.

13 When and where did you threaten Feeney with vio-
14 lence?

15 A I didn't threaten him.

16 Q Didn't you tell us you threatened somebody else?

17 A I was violent.

18 Q You were violent with him?

19 A Yes, sir.

20 Q What did you do to Feeney?

21 A I hit him like I hit Mr. Stoller when he broke up
22 my partnership and interjected his private thoughts in my
23 married -- new marriage. I did hit him in front of his
24 brother-in-law and my accountant one, two or three times
25 in a row.

1 gwrf 14

D'Onofrio-cross

2 Q You mean one, two or three separate occasions?

3 A No, one, two, three.

4 Q I see.

5 Did you ever carry a pistol?

6 A Carry a pistol?

7 Q Yes.

8 A No, sir.

9 Q When you went to Zambia, didn't you carry a pistol
10 with you?

11 A I don't recall, sir.

12 Q Don't you remember whether you had a pistol or
13 not when you went to Zambia?

14 A I don't recall, sir.

15 Q As you sit there you have a picture of yourself
16 getting on a plane, haven't you, going to Zambia with Gail,
17 the British agent?

18 A I think I met her over there, sir.

19 Q You have a picture of getting on the plane and
20 going to Zambia?

21 A Yes, sir.

22 Q Right?

23 A Yes, sir.

24 Q Do you remember how you were dressed?

25 A No, sir.

1 gwrfl 15 D'Onofrio-cross

2 Q Don't remember?

3 A No, sir.

4 Q And you don't remember whether you had a pistol
5 when you got on that plane?

6 A No, sir.

7 Q Is it possible you had a pistol?

8 A I doubt it very much.

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D'Onofrio-cross

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Q Didn't somebody give you a pistol?

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A No, sir.

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Q What is your answer, you did or you didn't have one?

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A I didn't.

7

Q Do you remember that you didn't?

8

A I recall that I didn't.

9

MR. SORKIN: I am just going to object. I don't see the relevance of carrying a gun with this, but --

11

MR. GOULD: The question is how violent he is.

12

MR. SORKIN: I think he has already testified, but if you want to proceed --

13

14

MR. GOULD: I am finished with the subject for the moment, your Honor.

15

16

MR. SORKIN: I don't see what relevance that has to anything.

17

18

THE COURT: Well, it is a little late, and we are going on to something else, he said.

19

20

MR. GOULD: We will indeed, your Honor.

21

Q Do you remember testifying before the SEC in the matter of AK Electric and the matter of Harwyn Industries, sir?

22

23

24

A In front of the SEC -- a separate proceeding?

25

Q Two separate proceedings.

1
2 A Yes, sir.

3 Q Do I understand your testimony in both of those
4 cases was perjurous?

5 A There were portions of the testimony on both of
6 those occasions that were perjurous.

7 Q Deliberately false?

8 A Yes, to hide my Swiss bank accounts.

9 MR. SORKIN: I object. That is misleading. The
10 indictment, 73-119 contains the Harwyn testimony and I think
11 it leaves the impression that it is a third occasion.

12 MR. GOULD: That is the same occasion. I conceded
13 it. It was preliminary to something.

14 MR. SORKIN: Thank you.

15 MR. GOULD: No doubt about it.

16 Q You remember filing an affidavit in the case
17 entitled Securities and Exchange Commission against Harwyn?

18 A Yes, I do, sir -- I don't remember, but I know
19 there was an affidavit filed.

20 Q Let me refresh your recollection. Does that help
21 you?

22 (Handing document to witness.)

23 A I don't know if it will or not.

24 Q That is a copy.

25 (Pause.)

1
2 A I don't recall it word by word. I remember the
3 affidavit.

4 Q You remember that affidavit. You remember that --

5 THE COURT: Mr. Gould, before we go forward,
6 do you remember you were going to mark in evidence,
7 and we are about to use another document --

8 MR. GOULD: Yes, your Honor. The document I
9 would like to have assigned a Stoller Exhibit No. is
10 3501-CC.

11 (Stoller Exhibit H received in
12 evidence.)

13 Q Your acquaintance with Mr. Sorkin goes back
14 some time, does it not?

15 A Acquaintance?

16 O You know him for some time, don't you?

17 A Adversarily, yes, sir.

18 Q You knew him in the early summer of 1970?

19 A Yes, sir.

20 Q Did you have some problems with him? Were you
21 friendly or unfriendly?

22 A I had tremendous problems with him. He had
23 problems with me. Both of us had problems with each other.

24 Q He was then in the Securities and Exchange
25 Commission?

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D'Onofrio-cross

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A Yes, sir.

Q You were one of the defendants in this fraud case, this civil fraud case, correct?

A That is correct, sir.

Q And you made certain charges against him, didn't you?

A Charges against him?

Q Yes, sir.

A Oh, the way he acted amongst people by calling them, or something?

Q In this affidavit, and I will have you read it, didn't you make certain allegations about Mr. Sorkin?

A The attorneys usually draw them up and you sign them.

Q Didn't you sign that paper?

A Yes.

Q Didn't you read it before you signed it?

A Usually I do.

Q When you signed it and read it didn't you say you have read Sorkin's affidavit and of your own knowledge it contained numerous false statements, unwarranted accusations and irrelevant, scurrilous innuendos?

A That is boilerplate lawyer's language. I don't know what it means.

Q Without reading it, you said that you have read the affidavit of Ira Sorkin on July 15th and his supplemental affidavit and "of my own knowledge said affidavits contain numerous false statements, unwarranted accusations and irrelevant, scurrilous innuendos."

That is what you said?

A I don't speak like that, I don't have that vocabulary. That is what my lawyer said. I don't even know what the words mean.

Q You couldn't care less what they mean?

A Not at that time, no.

Q You didn't care if you were making a charge of that serious nature against this man when he was a lawyer with the SEC?

A Nor did my lawyer care.

Q Let's forget your lawyer. He is not testifying here. I want to know about you.

A He prepared the document.

Q You didn't hesitate one minute to sign this paper with those accusations against this fellow in it?

A Nor did anyone else in the case.

MR. SORKIN: Your Honor, I don't think the accusations were against me. I think they were directed towards an affidavit filed in a civil suit by me.

2 MR. GOULD: Well, I must say, your Honor --

3 THE COURT: If that is an objection, I overrule
4 it.

5 MR. SORKIN: Very well, your Honor.

6 Q I may not be able to read it too good, but
7 it says here you have read his affidavit and of your own
8 knowledge it contains false statements.

9 A I didn't read his affidavit.

10 Q You were lying when you said that?

11 A That is correct.

12 Q But you didn't mind signing it?

13 A Willy nilly, no.

14 Q It didn't make any difference?

15 A No.

16 Q Do you have any recollection at all of what it is
17 you charged Mr. Sorkin with doing in this affidavit?

18 A No, sir.

19 Q Do you have any knowledge at all on which you
20 based these charges in this affidavit?

21 A I don't recall it at all, sir.

22 Q Didn't you charge Mr. Sorkin in this affidavit with
23 "Doing things with witnesses," improper things with
24 witnesses?

25 A If that is what it says --

2 Q Don't you remember anything at all about it?

3 A I don't remember, sir.

4 Q Oh, you told us I think yesterday on cross
5 examination that the only amounts of money that you have
6 received from the United States Government are witness fees
7 and travel expenses, correct?

8 A And per diem, yes.

9 Q How much per day do you get?

10 A \$20, as a witness, and \$16 additional if I stay
11 overnight.

12 Q And they pay some expenses for you?

13 A No, sir.

14 Q Do you pay your own hotel?

15 A I pay my own hotel, sir.

16 Q You do?

17 A Yes, sir.

18 Q Do you know a man named Mel Hiller, H-i-l-l-e-r?

19 A Yes, sir.

20 Q Do you remember meeting Mr. Hiller within the last
21 few months in front of this building?

22 A Yes, sir.

23 Q And do you remember having a conversation --

24 A In the last few months? Last year.

25 Q Well, in the spring of 1974.

A 1974?

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D'Onofrio-cross

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Q Yes.

3

A I don't remember in the spring of '74.

4

Q What do you remember?

5

A Last October sometime.

6

Q Let's assume it was October. You met him in front
7 of this building?

8

A Yes, with Mr. Segal, I believe.

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D'Onofrio-cross

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Q And you had a conversation with him, correct?

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A I don't recall the conversation.

4

5

Q Well, maybe I can refresh your recollection. Did you say to him or did he say to you, "How have you been? You are looking very well," and you said, "I'm fine."

6

7

Then he said, "What are you doing here?"

8

And do you remember what your answer was?

9

A No, sir.

10

Q Did you say to him, "I'm here to deliver bodies,

11

bodies, faceless people, etc."?

12

A That's a lie.

13

Q That is a lie?

14

A You're darn right it is.

15

MR. SORKIN: Your Honor, I will ask for an instruc-

16

tion at this time that the answer is evidence and not the

17

question.

18

MR. GOULD: Of course.

19

MR. SORKIN: It is, of course, to Mr. Gould, but

20

it may not be to the jury.

21

THE COURT: That is true and the jury will hear

22

me say it again.

23

Q Did he ask you whether you were working for the

24

Government?

25

A No, sir.

rmb-2

D'Onofrio-cross

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Q If he says that, that is a lie too?

3

A You're darn right.

4

5

Q Did you tell him you were getting three or \$400 a week from the Government, plus your traveling expenses?

6

7

A That's a lie. I had no discussion at all about moneys.

8

Q Did he ask you where you lived?

9

10

A Yes. I believe I told him I live in Las Vegas now.

11

12

13

Q Did you tell him that you live in Las Vegas and travel to New York and back at the Government's expense about once a week?

14

A I don't think I referred to that at all, sir.

15

Q You think that is another lie?

16

17

A No, I don't think it is a lie. It is a true statement, but I didn't discuss that with him.

18

Q It is true that you live in Las Vegas?

19

20

A Yes, and I travel when the Government requires me to come back.

21

22

Q Did you say to him, "It is no problem of yours, but some of your friends are on a greased rail to nowhere."

23

A No, sir.

24

25

Q Did you tell him you had reached an understanding or arrangement with the Government about what sentence

1 rmb-3

D'Onofrio-cross

2 you were to get and where you were going to serve it?

3 A Absolutely not. I did --

4 Q All lies?

5 A Let me correct the last statement, sir. I said,
6 " I have reached an agreement with the Government."

7 He said, "What is entailed?"

8 And I said, "I don't know how long I will be going
9 away. The only concession I got is that I may be able to
10 choose a prison near my home."

11 Q YYou have known Mr. Hiller quite a while?

12 A Many years.

13 Q Is he an honest, reputable citizen, to the best
14 of your knowledge?

15 A No.

16 Q He is not?

17 A No.

18 Q Do you know something bad about him?

19 A I know a lot of things.

20 MR. SORKIN: I dn't know if this is character
21 testimony or opinion testimony or reputation in the community,
22 your Honor. I think --

23 MR. GOULD: Mr. Hiller?

24 MR. SORKIN: I think it is entirely irrelevant,
25 but if Mr. Gould wants to open the door, then on redirect

1 rmb-4

D'Onofrio-cross

2 I deserve the opportunity to go into Mr. Hiller --

3 Q You know some bad things about Hiller?

4 A Yes, a lot.

5 Q That is all I want to know. Did you ever threaten
6 him?

7 A No, sir. I love him.

8 Q Did he ever threaten you?

9 A No, sir.

10 Q You recall, sir, testifying in the grand jury about
11 Mr. Brod?

12 A Yes, sir.

13 Q And you testified in the grand jury that Mr. Brod
14 had a Swiss bank account?

15 A Yes, sir.

16 Q And that you opened that for him?

17 A Yes, sir.

18 Q Was that true or false?

19 A That was true.

20 Q You prepared an affidavit, did you not, and
21 notarized it, in which you said you never opened a Swiss
22 account for Brod?

23 A Yes, sir, for his benefit.

24 Q This was a false affidavit?

25 A For Mr. Brod, yes, sir.

1 rmb-5

D'Onofrio-cross

2 MR. SORKIN: Your Honor, may we have that
3 marked, if it is being shown?

4 MR. GOULD: Well, give me a chance.

5 MR. SORKIN: I am sorry, but you did show it to
6 Mr. D'Onofrio. I am sorry.

7 Q This affidavit which you say you prepared was a
8 false and perjurous affidavit?

9 A For his benefit.

10 Q Never mind for whose benefit. It was false and
11 perjerous?

12 A Yes.

13 Q And you knew it was false and perjurous?

14 A Yes, sir.

15 Q Mr.Brod was your old boss, wasn't he?

16 A Yes, sir.

17 Q And you went into the grand jury and testified
18 against him?

19 A Yes, sir.

20 Q Did you tell the Government that you had given him
21 this affidavit for his benefit when you went in and testified
22 against him?

23 A I told the Government that I had given him an
24 affidavit. I don't know if I told them in the grand jury --

25 Q Did you tell them at any time before Mr. Brod

1 rmb-6

D'Onofrio-cross

2 was indicted on your testimony?

3 A Yes, but I told them the conditions upon which I
4 gave it to him.

5 Q You told them it was false?

6 A Yes, sir.

7 Q And you put your signature on it and swore to it
8 and put your picture on it?

9 A Never in a million years. Mrs. Barder gave him
10 that picture.

11 Q Who is she?

12 A My ex-mistress. She is around passing out pictures
13 and things.

14 Q She hates you?

15 A With a vengeance.

16 Q Did you treat her badly?

17 A I treated her very well.

18 Q Is that why she hates you?

19 A She is a scorned woman.

20 Q You left her for another woman?

21 A Yes, but I left her with a lot of money at the
22 time.

23 Q In this --

24 MR. SORKIN: Your Honor, may we have that marked?

25 MR. GOULD: Oh, sure, sure, let's have it marked.

1 rmb-7

D'Onofrio-cross

2 Mark the xerox, if you will.

xxx

3 (Defendant Stoller Exhibit I was marked for
4 identification.)

5 (Pause.)

6 MR. SORKIN: With the exception of the picture, I
7 accept --

8 MR. GOULD: Do you want the one with the picture?

9 MR. SORKIN: That is okay.

10 THE WITNESS: He has a hundred of them.

11 THE COURT: I don't follow you, Mr. Sorkin. What
12 are you objecting to?

13 MR. SORKIN: I am not objecting to it. I thought
14 I saw a picture on it.

15 MR. GOULD: Let's change it. I don't want him
16 to be unhappy.

17 Would you mark this one with the picture?

18 THE COURT: I thought you said you objected?

19 MR. SORKIN: No, your Honor.

20 MR. GOULD: Since we have it marked that way --

21 Q How do you know: this picture came from Mrs. Barder?
22 That is the same lady you lived with for seven years?

23 A She has 9, 10, I say 5. There is a big difference.
24 It grows a year every week.

25 Q It happens to many people. This sort of con-

1 rmb-8 D'Onofrio-cross

2 fusion is perfectly understandable.

3 How do you know he got this picture from her?

4 A She had a stack of them that were used for me when
5 I was an executive for a large major corporation and along
6 with it went my personal belongings -- how do I know --

7 Q How do you know Brod got them from her?

8 A Because she has been passing them to everybody
9 and anybody who would listen to her.

10 Q This was to publicity people?

11 A For a magazine, yes, sir.

12 Q And for your fan mail?

13 A What do you mean?

14 Q If people wrote in and wanted your picture --

15 A No, that went into a brochure.

16 MR. GOULD: May I inquire at what point your Honor
17 wants to recess? I am under some pressures from some other
18 source.

19 THE COURT: I was going to let you go a little
20 further, but if you want to stop, we will stop. I was going
21 to stop in a few minutes, and if you would like to, I would
22 stop.

23 Any objection?

24 MR. FELDSHUH: No, your Honor.

25 MR. SORKIN: No, your Honor.

1 rmb -9

D'Onofrio-cross

2 THE COURT: Ladies and gentlemen, we will
3 recess now then, and resume at ten o'clock.

4 I want to remind you of something I said earlier,
5 that on Friday I will be sitting in other cases all day,
6 and you can plan on having the day off to go about your own
7 business on Friday.

8 We will have an all-day session tomorrow, but
9 Friday you will have off.

10 See you tomorrow at ten o'clock sharp.

11 (Adjourned to Thursday, September 12, 1974,
12 at 10:00 A.M.)

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Sheldon Levine	670			
Jean Francois DeCharriere	675	678		
Herbert VonBredow	687	690		
Ramon N. D'Onofrio (Resumed)		702		

EXHIBIT INDEX

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K	739	
L	752	
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2A through 2E	820	

1 rmrf

654

2 United States of America

3 vs

4 Philip Stoller and Martin Frank

5 New York, New York
6 September 12, 1974
10:00 a.m.

7 (Trial resumed.)

8 (In open court, jury present.)

9 THE COURT: Good morning, ladies and gentlemen.

10 MR. SORKIN: May I proceed, your Honor?

11 THE COURT: Yes.

12 MR. SORKIN: With the leave of the Court, your
13 Honor, we ask to interrupt Mr. D'Onofrio's cross examination
14 and call Pierre Henchos.

15 THE COURT: In other words, ladies and gentlemen,
16 by agreement of counsel, we are interrupting Mr. D'Onofrio's
17 cross examination, he will return later, so that certain
18 other witnesses can appear now and be completed.

19 P I E R R E H E N C H O z, called as a

20 witness by the Government, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SORKIN:

24 Q Mr. Henchoz, would you please keep your voice
25 up and talk loudly and clearly?

1
2 A Yes.

3 Q Are you a Swiss citizen?

4 A Yes, I am.

5 Q Where do you reside?

6 A Lausanne, Switzerland.

7 Q During the period from 1969 through September
8 of 1969 were you employed by the brokerage firm of Emanuel
9 Deetjen & Company?

10 A Yes, sir.

11 Q From approximately January of 1969 through
12 September of '69, where were you employed? What office?

13 A I'm sorry, can you repeat the question?

14 O Yes, sir.

15 From January of 1969 through September of 1969,
16 where were you employed, what office of the Emanuel
17 Deetjen Company?

18 A In Lausanne, Switzerland.

19 Q From the period of approximately 1966 through
20 1969 did you service an account for the Bank Hofmann in
21 Zurich, Switzerland?

22 MR. GOULD: I object to that.

23 A Yes.

24 THE COURT: I will let it stand. However, I
25 will only do so on the basis that you will enlighten us

1 rmrf 3

2 as to what you mean by servicing the account.

3 MR. SORKIN: Yes, your Honor.

4 MR. GOULD: Would your Honor explain to the
5 witness when I stand up it indicates there may be an objection
6 and he should wait until your Honor rules?

7 THE COURT: Did you hear that?

8 THE WITNESS: Not quite well. I am sorry.

9 THE COURT: Let's go ahead. We will take care of
10 it.

11 Q What was your position in Emanuel Deetjen?

12 A At this time?

13 Q Yes, sir.

14 A I was registered rep and also assistant manager
15 of this firm.

16 Q What were your duties as a registered representa-
17 tive?

18 A By servicing accounts. I mean, we were acting --
19 a broker in Switzerland, acting as a transmission office
20 between the head office in New York and our clientele. Our
21 clientele in Switzerland is mainly institutions and banks.
22 So we were splitting the charges between the old RR office,
23 registered rep, and among the banks I had to take care
24 of was the Bank Hofmann.

25 Q Do you know a gentleman by the name of Alfred

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Henchoz-direct

657

Herbert?

A Yes, I do.

Q How long have you known Mr. Herbert?

A It's back from around '66 -- yes, '66.

Q Do you know who Mr. Herbert is?

A Yes.

Q Who is he?

A You mean now?

Q Then.

A Then he was at the bank, working at the bank.

Q Which bank?

A Bank Hofmann.

Q Do you know in what capacity?

A As far as the record he was --- the translation
in English as officer.

Q An official of the bank?

A Yes.

Q Let me show you, Mr. Henchoz, what has been
previously marked Government's Exhibit 18 for identification.

MR. SORKIN: Your Honor, I have copies for defense
counsel.

Q Would you look at that, please, and don't read
from it, just tell us what it is, the type of document
it is?

A This document is a copy of the copy that our

Lausanne office did receive from the bank.

Q Is that, Mr. Henchoz, an exact copy of the copy you received from the bank?

A Yes, because it is stamped with our receipt in Lausanne.

Q When was that received?

A On March 13, 1969.

Q Do you recall seeing that when it arrived at our office?

A Yes, I did.

MR. SORKIN: Your Honor, at this time we offer 18 in evidence.

MR. GOULD: May I ask one or two questions about the document, your Honor?

THE COURT: Certainly.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q Did you turn this document over to the Government?

A Myself? No.

Q Did your firm, Emanuel Deetjen turn it over to them?

A I don't know.

Q Do you know where it came from?

A This document?

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Q Yes, sir.

A I saw this document here.

Q For the first time?

A No, the first time I saw the document was the copy at Emanuel Deetjen.

Q Have you compared this with the original at Emanuel Deetjen?

A No, but I am sure this is the copy.

Q I understand you are sure, but you have not made a comparison of this with the document at Emanuel Deetjen?

A No.

Q And the first time you ever saw it was here in this building?

A This copy, yes.

Q When it was shown to you by Mr. Sorkin or somebody connected with him?

A Yes.

MR. GOULD: I object to it.

BY MR. SORKIN:

Q Do you know where the original is?

A Should be in the files of Emanuel Deetjen.

MR. SORKIN: We offer it in evidence.

MR. GOULD: Same objection.

THE COURT: I take it you join in this, Mr.

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Henchoz-direct

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Feldshuh.

MR. FELDSHUH: I do, your Honor.

THE COURT: May I see the document?

MR. SORKIN: Yes, your Honor.

(Hanging.)

THE COURT: Mr. Henchoz, in your recollection, is that an accurate and complete copy of the one which you remember receiving in your office in Lausanne?

THE WITNESS: Yes, sir.

THE COURT: The objection is overruled. It will be received.

(Government's Exhibit 18 received in evidence.)

MR. SORKIN: Your Honor, may I just read it briefly to the jury?

THE COURT: Yes.

MR. SORKIN: Will counsel stipulate that vir seden ihnen heuter means "We send to you today"?

MR. GOULD: Yes.

MR. FELDSHUH: I have no objection.

(Mr. Sorkin reads to jury from Government's Exhibit 18 for identification.)

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1 gab-1

Henchoz-direct

660a

2 Q Mr. Henchos, after receiving this letter did you
3 have a conversation with Mr. Herbert?

4 A Yes, I did.

5 Q How soon after, sir?

6 A It was let's say two or three days after because
7 I did send a telex to New York.

8 Q All right. Was it by phone or in person?

9 A By phone.

10 Q Tell us, please, Mr. Henchos, what you said to
11 Mr. Herbert and what Mr. Herbert said to you?

12 A After receiving the wire from New York that he did
13 receive the stocks, I did advise Mr. Herbert we did receive
14 the stocks in New York.

15 Q Did Mr. Herbert say anything to you?

16 A Mr. Herbert told me, "Please confirm that you are
17 going to change these stocks into street name."

18 Q After that conversation did you have another con-
19 versation with Mr. Herbert by telephone?

20 A Yes.

21 Q What did you say to him --

22 MR. FELDSHUH: When?

23 Q How soon after the first conversation?

24 A Because I did send back a telex to New York asking
25 "Please confirm you are going to put these stocks in street

2 name."

3 Q How soon after the first telephone conversation
4 did you have the second conversation?

5 A It should have been the same day or the day after.

6 Q Tell us please what you said in the second tele-
7 phone conversation, what you said to Mr. Herbert, what Mr.
8 Herbert said to you?

9 A Well, after receiving the telex from New York I
10 phoned Mr. Herbert telling him that we do need a proof of
11 ownership for these shares to be registered in street name.

12 Q What, if anything, did Mr. Herbert say to you, sir?

13 A He was surprised and asked me, "Well, what is a
14 proof of ownership? Please elaborate. I would very much
15 appreciate if you can confirm this and send me a telex," which
16 I did.

17 Q Let me show you now what has previously been marked
18 as Government Exhibit 19. Would you look at 19, Mr.
19 Henchos and tell us, please, just what it is. Don't read from
20 it or anything, just tell us what it is.

21 A This document is a copy of the telex that I did
22 send to Bank Hofmann.

23 Q Is that an exact copy, Mr. Henchos, of the telex
24 that you sent?

25 A Yes, I do recognize exactly the telex that I did

2 send.

3 Q Is the telex in English or French, sir?

4 A It is in French.

5 Q Do you speak French?

6 A I do.

7 MR. SORKIN: Your Honor, at this time we move to
8 have Government Exhibit 19 into evidence. I show it to
9 counsel (handing).

10 (Pause.)

11 MR. GOULD: Are you offering it?

12 MR. SORKIN: Yes, I am, Mr. Gould.

13 MR. GOULD: I have no objection.

14 VOIR DIRE EXAMINATION

15 BY MR. FELDSHUH:

16 Q When was the last time that you saw the original
17 of Government Exhibit 19?

18 A The last time?

19 Q Yes, Mr. Henchose, before today.

20 A Today.

21 Q Before that when was the last time?

22 A Before?

23 Q Yes.

24 A It was yesterday.

25 Q And before yesterday when was the last time, sir?

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A One month ago when I came to New York --

MR. SORKIN: Excuse me, Mr. Feldshuh --

Q In the interval of time between March 28, 1969, the date that Exhibit 19 for identification bears, and a month ago, when did you see a copy of this?

A I saw this copy, it was on August 11th or 12th.

Q Of what year, sir?

A I Beg your pardon?

Q Of what year?

A This year.

Q This year?

A Yes.

Q When after March 29, 1969, did you next see a copy of Government Exhibit 19?

A It was last month, August 12.

Q So I take it, sir, that there was an interval of some five and a half years or five years and three months between the time that you first saw the original and the time that you saw a copy, is that correct?

A Yes, sir.

Q Did you compare this copy with the original, sir?

A No, sir.

MR. FELDSHUH: I object to it, your Honor.

THE COURT: Objection overruled.

1 Government Exhibit 19 will be received.

xxx

2 (Government Exhibit 19 for identification
3 was received in evidence.)
4

5 BY MR. SORKIN:

6 MR. SORKIN: I will not take the time to have
7 Mr. Henchos translate this at this time, your Honor.

8 MR. GOULD: We can agree on the translation.

9 Q In substance, what did you ask Mr. --

10 MR. GOULD: No.

11 MR. SORKIN: I don't know how to proceed, your
12 Honor. I will ask him to translate it, if that is all right
13 with your Honor.

14 THE COURT: I think either we get it translated
15 or we don't. I don't see why if you put this in evidence
16 we proceed this way.

17 MR. SORKIN: I was going to have Mr. Henchos
18 translate it.

19 THE COURT: Fine.

End 2A

1 gwrf 2b am

Henchoz-direct

665

2 Q Would you tell us please, Mr. Henchoz, what is
3 contained there?

4 MR. GOULD: I would like to have a copy while
5 he is doing it. Your Honor, do you mind if I look over his
6 shoulder?

7 THE COURT: You mean to say we have no other
8 copies other than this, Mr. Sorkin?

9 MR. SORKIN: We have tried to make the best copies
10 possible. Some of it just won't print up on any machine.
11 I'm sorry.

12 A "Lausanne, dated March 28, 1969, 3:38 p.m.,
13 attention to Mr. A.P. Herbert.

14 "Good morning. Reference your remittance in
15 deficit of 40,900 shares Training With The Pros as per
16 the detail of your shipments and your letter, memorandum,
17 March 12, 1969. As per our various telephone conversations,
18 we herewith confirm that our head office of New York" --
19 "Our office of New York is asking you a proof of
20 ownership of these shares. In other words, it is a con-
21 firmation duly signed by the various clients who sold
22 these shares to the Bank Hofmann. We remind you" --

23 MR. GOULD: Excuse me. May I make a suggestion
24 to the witness?

25 "We have to have a confirmation. We have to have

a confirmation signed by the various selling clients that they have transferred title to the Bank Hofmann."

THE WITNESS: Right.

MR. GOULD: Okay.

A "We remind you that this is a pure preventive measure."

MR. GOULD: Or "security measure"?

THE WITNESS: Yes.

MR. GOULD: "Purely a security measure."

We agree on that.

A "We thank you in advance of our collaboration and we present, sir, our best regards."

MR. GOULD: "Compliments"?

THE WITNESS: Yes.

MR. GOULD: Thank you very much.

MR. SORKIN: Thank you both.

BY MR. SORKIN:

Q Mr. Henchoz, after this telegram was sent, did you have a conversation with Mr. Herbert?

A Yes. After receiving that wire Mr. Herbert told me --

Q Did he call you, sir?

A He did call me.

O What did you say to him and what did he say to you?

A He did ask me regarding that proof of ownership, that he would like to hear from my senior partner.

Q Who was your senior partner?

A Mr. Jean Francois DeCharriere.

Q Was there any further conversation?

A No.

MR. SORKIN: I have no further questions at this time, your Honor.

MR. GOULD: Can we have one or two minutes to look at these papers, your Honor?

(Pause.)

CROSS EXAMINATION

BY MR. GOULD:

Q Mr. Henchoz, you have been working in Deetjan's, worked there for a good deal of time, correct?

A Yes, sir.

Q As a registered representative you familiarized yourself, did you not, in a general way, with the rules covering transfer of securities?

A Yes.

Q You knew, did you not, that the securities when they were presented to you in another name for transfer had to go to the transfer agent in New York?

A Right, sir.

2 Q And the decision as to whether they would be
3 transferred or not really rested with the transfer agent?

4 A Yes.

5 Q That is the way it worked?

6 A Yes.

7 Q And it was not an unusual event, was it, for you
8 to require a customer to present proof of ownership?

9 A No.

10 Q It happened very often?

11 A Sure.

12 Q And there were various ways in which customers
13 could present proof of ownership, were there not?

14 A Yes.

15 Q You could get signatures guaranteed by a bank?

16 A Yes.

17 Q You could get signatures guaranteed by a member
18 firm in New York?

19 A Right.

20 Q Or even by an over-the-counter firm if you knew
21 them well?

22 A Yes.

23 Q And there were other people whose guarantees you
24 would accept as well?

25 A Yes.

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Henchoz-cross

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Q A number of people?

A Sure.

Q And it was a common routine occurrence to request a customer presenting securities for transfer to request him to give you proof of ownership?

A Right, sir.

Q And proof that there was a regular transfer, and that was a security measure, was it not?

A It was a security measure.

Q Certainly. And it was a security measure, was it not, to prevent the transfer of stolen or lost securities?

A Exactly.

Q That is the only thing you had in your minds when you asked for that?

A Yes.

Q And it was done as a routine matter?

A That's right.

Q And there was nothing unusual or irregular about this transaction when you asked the Bank Hofmann to get you proof of ownership and proof of transfer?

A Right, sir.

MR. GOULD: That's all. Thank you very much.

MR. FELDSHUH: No questions.

MR. SORKIN: No further questions, your Honor.

THE COURT: Thank you, Mr. Henchoz. You may be excused, sir. Thank you.

(Witness excused.)

MR. SORKIN: Your Honor, the Government calls Sheldon Levine.

S H E L D O N L E V I N E, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Levine, please keep your voice up, sir.

Mr. Levine, during the period from 1963 through 1973 were you employed by the brokerage firm of Emanuel Deetjen & Company?

A Yes, sir.

Q Where?

A In New York.

Q What was your position?

A I was an assistant manager, margin department, in charge of foreign margin accounts.

Q Let me show you now, Mr. Levine, what has previously been marked as Government's Exhibit 16 for

identification.

MR. SORKIN: Copies to defense counsel.

Q Would you please look at this and tell us what it is? Don't read from it, just tell us what it is.

A It is a copy of a letter from the bank.

Q Mr. Levine, which bank?

A Bank Hofmann, Zurich.

Q Is that the original that you received?

A It is a Xerox copy of the original.

Q There are certain initials on top.

Whose initials are those?

A Mine.

Q Did you put them there?

A Yes.

Q That is SL.

A Right.

MR. GOULD: Up here you mean?

MR. SORKIN: Yes.

Q When did you put those initials there?

A When I received this.

Q Are there any other identifying marks on this document?

A Yes. The account number.

Q Who put that on there?

A I did.

Q Is that your handwriting?

A Yes.

MR. SORKIN: Your Honor, we offer No. 16 in evidence.

MR. GOULD: Am I in error, that this is the same paper that we just had a little while ago?

MR. SORKIN: It is a copy of it but it is not the same document itself.

MR. GOULD: It appears to be a Xerox of the same thing.

(Counsel confer off the record.)

MR. GOULD: All right, I have no objection.

MR. FELDSHUH: Based on your Honor's ruling, no objection.

THE COURT: This is all very fine, gentlemen, but since I have never seen any of this I couldn't know what you are talking about.

MR. GOULD: You better show the Judge both of them.

(Documents handed to the Court.)

1 THE COURT: Well, I understand, now that I see
2 these, what you are talking about, but may I ask you, Mr.
3 Sorkin, what is the point of adding to this?

4 MR. SORKIN: Very simply, your Honor, number 18
5 was sent to the Lausanne office --

6 THE COURT: Why do we have to duplicate all this?

7 MR. SORKIN: No. 16, your Honor, is the very one
8 Mr. Levine received with the shares in New York, and
9 I will elicit that from him.

10 MR. GOULD: We will concede that. Why do we
11 need both papers?

12 MR. SORKIN: They are really two separate
13 documents, your Honor, received in two separate places.

14 THE COURT: I understand that, but what does it
15 add to our total learning in this case where, presumably,
16 we are having some small search for the truth?

17 MR. SORKIN: If I may develop it --

18 THE COURT: If you are going to pile paper upon
19 paper for the sake of piling paper upon paper, fine,
20 but I don't think that is what you are intending to do. Since
21 defense counsel don't object, I won't press it at this
22 moment, but I will press it later if we keep doing this.

23 (Government's Exhibit 16 received in
24 evidence.)
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Levine-direct

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Q What if anything accompanied this document?

A Securities.

Q How many?

A 14,900 shares.

Q What did you do with those securities?

A They were given to the cage.

Q What is the cage?

A The cage is the place in the firm where all the securities are kept.

MR. SORKIN: I have no further questions at this time, your Honor.

MR. GOULD: If your Honor please, I move to strike the testimony as having no probative value. I don't know what the man said that has anything to do with this case. The other man says he sent the securities to New York and we already have that and all he says is, "Yes, I got them."

THE COURT: I think perhaps that is the point. You want to establish through Mr. Levine who was here in the New York office that the securities were actually received?

MR. SORKIN: That is correct, your Honor.

THE COURT: I will let it stand.

Any cross examination?

MR. GOULD: None, your Honor.

THE COURT: You may be excused.

(Witness excused.)

MR. SORKIN: Your Honor, the Government calls
Jean Francois DeCharriere.

J E A N F R A N C O I S D E C H A R R I E R E ,

called as a witness by the Government, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes, sir.

Q Mr. DeCharriere, please keep your voice up.

From 1957 through June 1969 were you employed
by the firm of Emanuel Deetjen & Company?

A Yes, I was.

Q From approximately January 1969 through June
of '69 what was your position?

A Which period of time?

Q January '69 through June '69.

A I was senior partner.

Q Do you recall where you were on March 28, 1969?

A I was in Paris, at the Plaza, and we had an office
there also.

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DeCharriere-direct

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Q Did you have a telephone conversation?

A Yes.

Q Tell us, please, who you spoke to?

A I spoke to a man by the name of Herbert at the Bank Hofmann.

Q Tell us, please, what you said and what he said to you?

THE COURT: First of all, before we get to that, I am confused, Mr. DeCharriere. Apparently you were in your firm's Paris office that day.

THE WITNESS: Yes, sir.

THE COURT: Who called whom? In other words, did Herbert call you or did you call Mr. Herbert?

THE WITNESS: No, I got a phone call from our office in Lausanne, which was the head office for all foreign operations, from Mr. Henchoz, requesting me to call Herbert.

THE COURT: And you did so?

THE WITNESS: And I did so.

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2 Q Tell us, please, what you said and what Mr.
3 Herbert said.

4 A I said to Mr. Herbert that regarding the transfer
5 in street name of the 40,900 shares of Training With the
6 Pros, I will not do it unless I get proof of ownership, and
7 Herbert got very upset about it and said, "Well, it is
8 breaking the law of the bank's secrecy if I do so."

9 I said, "That is your problem, not ours. The
10 law is the law, and I am senior partner of Emanuel Deetjen
11 and therefore I have to apply the law of the United States,"
12 and I was a resident of the United States at that point.

13 Herbert said, "Well, you know we are very important
14 customers of yours."

15 I said, "Yes, I do know about it."

16 He said, "You know that we may become very less
17 active then."

18 I said, "I couldn't care less whether or not you
19 become less active or not active whatsoever, but I will n-t
20 transfer to the street name unless I get proof of ownership."

21 That conversation must have been taking place
22 between 5:30 at night, P.M., and 6:00 P.M., and it seems
23 to me that he addressed a letter to me that I never saw --

24 Q Was there any mention of a letter in that con-
25 versation?

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DeCharriere-direct
cross

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A He said he would send a letter.

Q To you?

A No, he didn't mention whether it was to me or not.

Q Was any other conversation had concerning that
letter?

A No.

MR. SORKIN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. GOULD:

Q You have familiarized yourself, or had in 1969,
with the general rules of transfer of securities in the
United States, is that correct?

A We had a lawyer, in-house lawyer, who was familiar-
ized with the rules, and he used to call me on that specific
case.

Q He was in New York?

A Yes.

Q He was an American lawyer?

A He is an American lawyer.

Q And your practice, I assume, was in cases of
doubt about transfers, you would communicate with this man,
this lawyer, in New York?

A Yes, sir.

Q And so when you indicated to Bank Hofmann that you

rmb-3

DeCharriere-cross

wanted proof of ownership, you were doing so in reliance on what he told you from New York?

A Sure. That is the reason why we paid him.

Q Sure, that is what he was there for?

A Exactly.

Q And these questions came up all the time, didn't they, as to the propriety of transfers?

A We never had such a case from Switzerland.

Q In Switzerland you never had such a case?

A No.

Q Is it the fact that this was not --

A It was a very unusual request, from a bank, a Swiss bank.

Q Why was it unusual?

A Because we always bought street name direct. We never received shares the way we received these shares.

Q Normally the shares you would have received would already have been transferred into street name in New York?

A Normally the shares we would have which were nominees either of the Swiss Bank Corporation or Union Bank of Switzerland or Credit Swiss --

Q That is the same as street name in New York?

A Yes.

Q In other words, you would get normally in securities

1 rmb-4

DeCharriere-cross

2 transactions, where the securities were delivered to you,
3 certificates which had already been transferred into either
4 nominees or street name?

5 A Street name.

6 Q That is the normal thing?

7 A True.

8 Q But you have seen cases before where certificates
9 were delivered to you in the name of individuals?

10 A Not to my knowledge.

11 Q Never saw that?

12 A Not to my knowledge -- at least not in that amount.

13 Q Was that an unusual amount?

14 A 14,900 shares trading at the time at 66 was pretty
15 hectic.

16 Q Pretty what?

17 A Was a pretty high price stock, coming from 26
18 a couple of weeks ago.

19 Q So you wanted to be sure --

20 A I was not the guy that wanted to, our lawyer put
21 a finger on it and as I was the senior partner and I was
22 located in New York, not in Europe, but I was at that time
23 traveling with one of our partners, where we made speeches
24 in Europe -- every year we made speeches all around Europe --
25 and he came up with another case which was very important too,

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DeCharriere-cross

and I said that I will not accept any transfer unless I get proof of ownership.

Q Or bank guarantees?

A No.

Q You would not take a bank guarantee?

A No.

Q You wanted to be sure that the people whose names were on those certificates and who had purportedly transferred them to the Bank Hofmann, that they were the real owners?

A Yes, sir.

Q You wanted to be sure they were not stolen?

A Yes, sir.

Q Or lost?

A Well --

Q In other words, that they had come into the hands of Bank Hofmann in a perfectly lawful way?

A Pardon me?

Q In a lawful way?

A Yes, that Bank Hofmann owned --

Q What you were concerned about was, shall we call it, security? Is that right? Prevention of the transfer of stolen securities?

A You are going much further than I went.

Q How far did you go? What were you concerned about?

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2 A I was concerned with the purpose of what our lawyer
3 was saying --

4 Q You just said what he said.

5 A More or less. He was paid for it.

6 Q You understood what it was that concerned him,
7 didn't you?

8 A Yes, I understood what he was concerned with.

9 Q And he was concerned --

10 A And I went further than that and said, "You should
11 go to Donald Hayes," who was the outside lawyer, "and make
12 sure that we are fully protected on this deal."

13 Q Against receiving stolen securities?

14 A No, I never said that word. Don't put words in my
15 mouth.

16 Q I am not. I am trying to understand what you were
17 concerned about.

18 A I wanted proof of ownership, besure the shares
19 were bought by the bank in regular ways.

20 Q And you wanted to be sure that the names that
21 were on the certificates were the names of people who had
22 actually bought them, that they had actually ben transferred
23 to Bank Hofmann?

24 A Yes, sir.

25 Q That is what you wanted to be sure about?

rmb-7

DeCharriere-cross

A Yes, sir.

MR. GOULD: Thank you very much. That is all.

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q When you spoke to your in-house lawyer -- you described him as your in-house lawyer?

A No, he described it to me.

Q Maybe we are not understanding each other. Did your lawyer tell you what kind of proof of ownership you should have?

A Yes.

Q When he told you what kind of proof of ownership you should have, what did he say?

A Most of the conversation that went on on this subject went on between Herbert Van Bredow, who was the manager of all the foreign operations, and Ned Pervis. It so happened that I was at that point in Paris with Herbert Van Bredow, and that Herbert from the Bank Hofmann said, "I will not give the proof of ownership or write a letter in that respect unless I get a phone call from your senior partner."

MR. SORKIN: There are two Herberts, Herbert Von Bredow --

THE WITNESS: He was the manager of all the foreign entities in Europe, and he was what we call the

1 rmb-8

DeCharriere-cross

2 back office lawyer, and everything.

3 Q So that there is no confusion to his Honor and
4 to the jury, you have now used the name Herbert in two dif-
5 ferent ways.

6 A Herbert VonBredow. He was in constant contact with
7 Ned Pervis on the case, and it happened that Herbert Von
8 Bredow was with me in Paris on that specific day and he
9 put me onto what went on and then Pierre Henchoz called me
10 and said to call Herbert at the Bank Hofmann because Herbert
11 at the Bank Hofmann will not send a letter unless I give him
12 my story and I will tell him I want the proof of ownership,
13 and without that we will not transfer the shares in street
14 name.

15 Q In your conversation with Mr. Herbert of Bank
16 Hofmann, did you tell him the kind of proof that you wanted,
17 the form of the proof?

18 A I said the proof of ownership. He understood very
19 well what I meant by proof of ownership. He was more aware
20 of what I meant than I was myself.

21 MR. FEILDSHUH: Could I have Government Exhibits 21
22 through 25, please.

23 MR. SORKIN: Yes.

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End 3B

1 gab-1 DeCharriere-cross 685
2 Q Sir, I show you Government Exhibit 21 in evidence,
3 and I ask you, sir, were you ever shown the proofs of owner-
4 ship that you talked about with Mr. Herbert?

5 A No, I was not.

6 Q Look at the exhibit 21. In your conversation with
7 Mr. Herbert did you understand that you would get the kind
8 of document referred to in Exhibit 21 in evidence?

9 A No, Ned Pervis told me what it was all about.

10 Q This is a very simple document?

11 A Yes, a simple document.

12 Q I show you, sir, Exhibit 5, Government Exhibit 5 in
13 evidence. Would you look at that, sir. You see it is in
14 ordinary handwriting, is that right?

15 A Sure.

16 Q Is this the kind of proof of ownership that
17 satisfied you upon that occasion?

18 A No. We wanted proof of ownership from the bank
19 that they really bought the shares from people.

20 Q Did you get any further document from Bank Hofmann
21 other than copies of these?

22 THE COURT: Just a moment, please. There has been
23 no establishment that he received any such documents at all.
24 So first things first. I remind you, Mr. Feldshuh, that now
25 you have made Mr. DeCharriere your witness.

2 MR. FELDSHUH: That's right, sir. Thank you,
3 sir.

4 Q I askyou, sir, what documents, if any, do you
5 know about that Emanuel Deetjen received from Bank Hofmann?

6 A I wanted from Bank Hofmann the certification that
7 they bought straight from a certain amount of people these
8 shares and they rightfully owned the shares in order for
9 us to make street name transfer.

10 Q Thank you very much, sir.

11 Would you answer my question? I asked you, sir,
12 what documents did you get from Bank Hofmann with regard to
13 Bank Hofmann's proof of ownership, if you know? If you
14 don't know, tell me you don't know.

15 A You better ask Mr. Von Bredow. He took it up from
16 that point.

17 THE COURT: In other words, you really had nothing
18 to do thereafter with getting any documents?

19 THE WITNESS: No.

20 THE COURT: That is what I thought.

21 Anything else, Mr. Feldshuh?

22 MR. FELDSHUH: Nothing else, your Honor.

23 MR. SORKIN: I have no further questions, your Honor.

24 THE COURT: Mr. Gould?

25 MR. GOULD: Nothing, your Honor.

1 gab-3

Von Bredow-direct

2 THE COURT: Thank you very much, Mr. DeCharriere.

3 You may be excused, sir.

4 (Witness excused.)

5 MR. SORKIN: Our last witness in this area is
6 Mr. Herbert Von Bredow.

7 H E R B E R T V O N B R E D O W, called as a witness
8 by the Government, having been first duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SORKIN:

12 MR. SORKIN: May I proceed, your Honor?

13 THE COURT: Yes, sir.

14 Q Mr. Von Bredow, during the period from 1962 to 1973,
15 were you employed by the brokerage firm of Emanuel Deetjen
16 & Company?

17 A Yes, sir.

18 Q In what office, sir?

19 A In Lausanne, Switzerland office.

20 Q Were you the head of that office?

21 A I became manager in about 1966, sir.

22 Q Let me show you, Mr. Von Bredow, what has previously
23 been marked in evidence as Government Exhibit 18.

24 Do you recall seeing this, sir?

25 A Yes, sir.

2 Q Where for the first time?

3 A This is a copy we received in our Lausanne office.

4 Q After you saw this, Mr.Von Bredow, did you have
5 a conversation with a man by the name of Alfred Herbert?

6 A Yes, sir.

7 Q How soon after you got this?

8 A I would say about 8 to 10 days.

9 Q Tell us, please, was it by telephone or in person?

10 A It was by telephone.

11 Q What did you say to him, sir, and what did he say
12 to you?

13 A I told Mr. Herbert of the bank at that time that
14 shares had been received by our New York headquarters and that
15 our New York headquarters requires additional proof of owner-
16 ship.

17 Q What, if anything, did Mr. Herbert say?

18 A He said that, to the best of his knowledge, the
19 shares were signed by the owners and the signatures are
20 guaranteed and they showed proof of sufficient ownership.

21 Q Any further conversation, sir?

22 A Later on.

23 Q In this same conversatinn or another telephone
24 conversation?

25 A No, I mean I would say about five to six days

2 later or three days later.

3 Q Tell us, please, was it in person or by telephone?

4 A By telephone again.

5 Q What did you say to him and what did he say to
6 you?

7 A I told him at that time that our New York office
8 was not satisfied with that proof of ownership, that they
9 need additional proof of ownership, and I tried to explain
10 what proof of ownership was.

11 Q Go ahead. What did he say?

12 A Mr. Herbert explained to me that it would be
13 difficult for him to furnish that immediately, at least, such
14 proof of ownership.

15 Q Do you know a gentleman by the name of Pierre
16 Henchoz?

17 A Yes, sir.

18 Q Who is Mr. Henchoz?

19 A Mr. Henchoz worked in that period of time at
20 Emanuel Deetjen in Switzerland as an account executive.

21 Q One last question, Mr. Von Bredow. Where were
22 you on March 28, 1969?

23 A To the best of my recollection, I was in Paris.

24 Q With anyone?

25 A With Mr. DeCharriere, who was at that time senior

1 gab-6 Von Bredow-direct
2 partner of Emanuel Deetjen & Company. cross

3 MR. SORKIN: No further questions, your Honor.

4 CROSS-EXAMINATION

5 BY MR. GOULD:

6 Q You have been in the securities business, Mr. Von
7 Bredow, for some time?

8 A Yes, sir. I joined Emanuel Deetjen Company
9 in New York in 1959.

10 Q In connection with your work in the securities
11 business, you know something about the rules governing trans-
12 fer of securities, don't you?

13 A Yes, sir.

14 Q That is part of your education in this sort of
15 work, isn't it?

16 A Yes, sir.

17 Q You know, do you not, that one of the problems with
18 the transfer of securities is that from time to time securities
19 are stolen or they are lost and they come into the hands of
20 people who are not entitled to them?

21 A Yes, sir.

22 Q And that is something which is a chronic problem
23 in the securities business?

24 A Yes, sir.

25 Q And, indeed, I am right, am I not, that every

brokerage firm and investment banking firm has a set of precautions to prevent stolen or lost securities being handed off to them?

A Right.

Q You know that? You have heard about that for a long time?

A Yes, sir.

Q And so we have developed almost internationally, have we not, certain rules under which we control the transfer of securities, right?

A Yes.

Q And we know, do we not, that when securities are handed from a bank to a brokerage firm, the brokerage firm wants to be pretty sure that the securities belong to the person who is handing them to them, and you wanted to know that before you presented those securities to the transfer agent for transfer into your street name or some other name?

A Yes, sir.

Q The normal thing would have been to take the securities, look them over and if the endorsements looked good or they were guaranteed, you would simply send them over to the transfer agent and get back a certificate in a street name?

1 gab-8

Von Bredow-cross

2 A That is what our headquarters in New York would
3 do.

4 Q You worked in New York and you know that is the
5 normal routine everyday way of doing it, correct?

6 A Yes, sir.

7 Q When you see a certificate in the name of individ-
8 uals, you are a little more concerned than when you see a
9 certificate in the name of an institutional owner?

10 A Usually.

11 Q Usually. In other words, if these certificates
12 for Training With the Pros had been registered in the name of
13 the Prudential Insurance Company with the endorsement of an
14 officer of the insurance company and a bank guarantee on the
15 signature, you wouldn't have hesitated a second, would you?

16 A I would not say so, sir, because it was very
17 rarely that Swiss Banks mail in securities directly to a
18 broker.

19 Q It was unusual--

20 A It is not -- it happens, but it doesn't happen very
21 often, sir.

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1 qwrfr 4b am 1 VonBredow-cross

2 Q What was it that disturbed you?

3 A Because they were mailed in from Switzerland.
4 That is why we were extra careful.

5 Q I see.

6 In other words, as a matter of experience you
7 had to assume that maybe these certificates had been lost
8 or stolen in the United States?

9 A It could have been the case.

10 Q That is what you were concerned with, wasn't it?

11 A It could have been the case, sir.

12 Q You were concerned that these might have been
13 hot securities? You have heard that expression, haven't
14 you?

15 A Certainly.

16 Q And hot securities means securities that have
17 been stolen by a messenger or somebody else and because
18 they are afraid to transfer them in the United States,
19 they send them to Switzerland?

20 A Yes, sir.

21 Q You were afraid that the Bank Hofmann in Switzerland
22 had bought these securities from the thief?

23 A Not -- certainly they didn't have to buy them.

24 Q Or that the thief had presented them to them?

25 A Yes, sir.

1 qwrfr 2 VonBredow-cross

2 Q Why didn't you simply ask the Bank Hofmann to
3 guarantee the validity of the certificates? You apparently
4 can't answer my question, why you didn't. It didn't occur
5 to you, did it?

6 A I do not think that our legal counsel would have
7 accepted that guarantee.

8 Q They were a respectable institution, weren't they,
9 Bank Hofmann?

10 A Definitely.

11 Q I mean, you regard them as decent people?

12 A Yes, sir.

13 Q Well known in the Swiss banking community?

14 A Yes, sir.

15 Q And it was most unusual for you to question their
16 certificates that they presented, wasn't it?

17 A No, sir.

18 Q The usual thing?

19 A If they deliver any securities to either our Swiss
20 office or mail them into New York to our office, we always
21 are extremely careful.

22 Q I see.

23 A With all of the Swiss banks.

24 Q Of all the Swiss banks. It didn't make any
25 difference to you whether these certificates came from Bank

Hofmann or from Union Bank?

A It would have been the same.

Q That is the biggest bank?

A Yes, sir.

Q If they come over from Union Bank, you would have acted the very same day?

A Or if they had mailed it in.

Q Normally, the Union Bank would have sent them to its own office in New York?

A To Chase.

Q That's right.

As far as you were concerned, this was a routine thing, you were doing what you normally do?

A Yes, sir.

Q It was nothing extraordinarily suspicious about this transaction?

A In the beginning I don't believe so, sir, no.

Q And in the end there was nothing suspicious, was there? You never learned that these were stolen, did you?

A Stolen? Not to the best of my knowledge.

Q You never learned they were spurious certificates, did you?

A I wasn't informed of that, no, sir.

Q So far as you know, these were perfectly legitimate

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VonBredow-cross

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certificates which had belonged to the individuals whose names
were on them?

A In the beginning, yes, sir.

Q How about in the end?

A In the end we heard that the SEC is investigating
it.

Q That doesn't make the SEC right, does it?

A No.

Q You never heard that they were stolen, did you?

A No, sir.

Q All you heard is what you heard from these fellows,
isn't that right?

A No, sir.

MR. SORKIN: Which fellows?

MR. GOULD: I'm sorry. That's very undignified.

Q Did Mr. Sorkin tell you that they were stolen
securities?

A Never, sir.

Q That they were spurious certificates?

A They were what?

Q Spurious, fake certificates.

A No, sir.

Q So as far as you know, back in 1969 you were
doing in your brokerage firm exactly what you would have

done with these certificates no matter which Swiss bank had presented them?

A Yes, sir. We needed exact proof of ownership.

Q You are now with Emanuel Deetjen, are you?

A No, sir. They went out of business.

Q How long ago?

A In 1969.

Q Where do you work now, sir?

A Reynolds Securities, Inc.

Q In Switzerland?

A Yes, sir.

Q Thank you.

MR. GOULD: I have no further questions.

CROSS EXAMINATION

BY MR. FELDSHUB:

Q Sir, I show you Government's Exhibits 5, 6, 7, 8, 9

I ask you, sir: Did you ever see these before?

A No, sir.

Q I show you, sir --

A I know that they existed. I heard they existed in our New York office.

Q You heard they existed?

A Yes, sir.

Q Who told you that? ..

2 A Our company, Emanuel Deetjen, at that time.

3 Q But you have never seen them?

4 A No, sir.

5 Q Just heard that from somebody?

6 A Yes.

7 Q I see. With regard to this somebody, he said
8 he had proof of ownership, is that it?

9 A No, he didn't say proof of ownership. He said
10 they received a certain kind of proof of ownership at
11 that time.

12 MR. SORKIN: I didn't hear the last part.

13 A I heard from our New York office that they had
14 received a certain kind of proof of ownership.

15 Q At that time, in March of 1969, you stated that
16 you were in the Lausanne office in Switzerland?

17 A Yes, sir.

18 Q Did Mr. Herbert send any papers to you other than
19 these stock certificates?

20 A He never sent the stock certificates. He
21 sent --

22 MR. SORKIN: I object, your Honor.

23 THE COURT: Gentlemen, I can't hear a word
24 with everybody talking at once.

25 MR. SORKIN: I think there was testimony that the

stock certificates were received in New York, your Honor?

THE COURT: That may be. That isn't a valid ground for an objection. Let's go back.

Would you put a question that we can understand here, Mr. Feldshuh, and we will start all over again before you were interrupted.

Q Sir, did Mr. Herbert deliver to you at the Lausanne office any papers referrable to this situation of Training With The Pros?

A The only papers I received in the Lausanne office was a copy of the letter which accompanied the shipment.

Q Just a copy?

A Which I just --

Q You just saw?

A I forget the number.

Q That's Government's Exhibit 18.

A 18, I believe.

MR. FELDSHUH: Mr. Sorkin.

MR. SORKIN: That is correct, Mr. Feldshuh.

Q So it is the fact that other than having heard from the New York office that they got some papers --

A Yes.

Q -- you didn't know anything about the form of

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VonBredow-cross

700

the proof of ownership or anything of that sort, is that
right?

A Of the form of the certificates, you mean?

Q Yes, or the proof of ownership.

A No, I didn't.

Q You just rested upon what the New York office
said?

A Exactly.

MR. FELDSHUH: No further questions.

THE COURT: Anything further, gentlemen?

MR. SORKIN: Nothing, your Honor.

THE COURT: Thank you, Mr. VonBredow, you may
be excused, sir.

(Witness excused.)

THE COURT: If I understand you gentlemen
correctly, apparently it is agreed that Mr. D'Onofrio
will return at this point.

MR. GOULD: Yes.

MR. FELDSHUH: That is correct, sir.

MR. SORKIN: That is correct.

THE COURT: Why don't we use this interval
to take the morning recess.

Ladies and gentlemen, a ten minute recess.

(Recess.)

(Jury not present.)

MR. GOULD: If your Honor please, before we get the jury back -- this is more a cry of pain than a complaint. I don't understand what has happened here this morning. There is not one word that was elicited from these three witnesses that I would not have been prepared to stipulate. It is all record stuff and even the conversations I would have stipulated to them.

I am not complaining about what I regard as the incredible extravagance of bringing people like this from Switzerland for what we saw this morning -- that is for somebody other than me, I am just a poor, old taxpayer -- but I am making the point because if Mr. Sorkin has other testimony of this character we don't have to waste the time of the Court and jury and the energies of counsel and I am perfectly prepared to stipulate if he will tell us in advance what he wants to elicit.

THE COURT: I understand you, Mr. Gould, and I have some sympathy for this, and certainly I do generally, but on the other hand as you know American judges are not supposed to try cases for either side and therefore I was not apprised of this any more than you were.

However, in fairness to Mr. Sorkin, I must say in the early going when we had Mr. Henchoz on there were

objections as to the competence of certain documents --

MR. GOULD: Just the one document.

THE COURT: Nevertheless, he had every reason to assume that might be so. However, the point you are making, which came from your own lips, and you correct me if I am wrong, is a good one. If there is any other proof of this material may I suggest, Mr. Sorkin, you ask Mr. Gould and Mr. Feldshuh and we may well save considerable time and expense, an item which is of considerable importance to the wretched people of the United States who don't seem to fully realize yet just what has fallen upon us.

MR. SORKIN: Yes, your Honor, I will do that.

THE COURT: Are you in good voice and feisty enough to resume your cross examination, Mr. Gould?

MR. GOULD: Yes, sir.

(Jury present.)

R A M O N N. D ' O N O F R I O, resumed

the stand and testified further as follows:

CROSS EXAMINATION

BY MR. GOULD (Continued.):

THE COURT: As you know, ladies and gentlemen, we are, by agreement, resuming the cross examination of Mr. D'Onofrio by Mr. Gould.

O Mr. D'Onofrio, as I understand what you said here

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D'Onofrio-cross

703

in the last couple of days, you made a great deal of money
in manipulation of securities and other activities,
did you not?

A Yes, sir.

Q Give us an approximation of what your net worth
was in, say, 1967?

A Well, there are two kinds of net worth. One is
paper and one is cash.

Q Let me help you. Let's talk in terms of assets,
what you thought were assets.

A And how I evaluated them?

Q That's right.

A Anywhere from six million to ten million dollars.

Q We have it that in 1967 in your judgment you had
assets of anywhere from six million to nine million
dollars?

A In lettered securities, yes, sir.

Q Those are value things, unless they fall down to
nothing, and then they are nothing.

Q That is what you had in '67. In '67 you had --
in '68 you had made more money?

A You said '67?

Q I said '67.

A No, no. 1967, I was only a year out of the

2 dair business. I thought you said '69. '67, I had --

3 Q You didn't hear me when I said '67?

4 A No, I said I thought you said '69.

5 There are many words you have said that I have not
6 heard clearly at times.

7 Q '67 sounds like '69?

8 MR. SORKIN: Objection, your Honor.

9 THE COURT: Yes.

10 Q Tell me about '67.

11 A I was a year out of the dairy business and I
12 had virtually no assets.

13 Q You were broke?

14 A No, I had virtually no assets. I was not broke.

15 Q You owned stock in 1967?

16 A A little bit of stock, yes.

17 Q You owned stock which you valued at a very
18 considerable amount, isn't that right?

19 A Depending on what you call considerable.

20 Q What do you call considerable?

21 A I have no reflection on those papers, but
22 I would call considerable a million dollars.

23 Q In '67 you had a million dollars worth of stock?

24 A I didn't say that. I said that is what I
25 would call considerable.

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D'Onofrio-cross

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Q I want to know how much you had in '67?

A I have no recollection.

Q Were you broke in '67 or did you have property in '67?

A I had some money in a tin can that I had hidden.

Q How much?

A At least \$90,000.

Q Okay.

A And some odds and ends assets, but I don't recall.

Q Is it a fair statement that you had at least \$100,000 in cash and other assets in '67?

A I told you \$100,000 in a tin can. I just answered your question.

Q You said \$90,000.

A I said between 70, 90, \$100,000, maybe \$115,000, depending on how much Mrs. Barder clipped from me. I know I put in \$115,000. Maybe it was only 80 one day.

Q That was '67?

A Yes, when I stole the money from the bankruptcy.

Q Stole it from whom?

A The bankruptcy. I stole it in '66 and still had it in '67.

Q Did you not file an affidavit in 1967 sworn to in which you said you had no assets whatever?

2 A I filed two affidavits, sir.

3 Q Two of them?

4 A Yes, sir.

5 Q They were both false?

6 A Yes, sir.

7 Q They were lies?

8 A Yes, sir.

9 Q You said, "I have no assets of any kind except
10 earnings from my employment which are needed for my sub-
11 sistence and requirements" correct?

12 A Yes, sir.

13 Q And that was false?

14 A Absolutely.

15 Q Sworn to before a notary public?

16 A I believe so, yes, sir, my lawyer.

17 Q And filed in a court?

18 A Before the Court of Judge Weinstein, the one
19 who sentenced me.

20 Q The Federal Court, United States District Court,
21 Eastern District?

22 A Yes, sir.

23 Q So you filed two false and perjurious affidavits
24 in that court?

25 A That is correct.

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D'Onofrio-cross

707

Q And you knew them to be false and perjurous?

A I wanted to cover up my crime.

Q Which crime were you trying to cover up then?

A The bankruptcy fraud.

Q You mean stealing from the bankrupt estate?

A I don't know if you call it stealing, misappropriation is the word, but stealing is a good word.

Q So we have it, then, that you were a thief?

A Yes, sir.

Q And you were a liar?

A Yes, sir.

Q And you were a perjurer?

A Yes, sir. Isn't lying and perjury the same thing?

Q Well, I don't know.

A Then why did you put them in two questions?

Q I am a bad man, but I don't think so.

Did you ever testify before the New York Department of Agriculture and Markets?

A Yes, sir.

Q And that was in connection with an investigation into, let's say, the milk business, the dairy business?

A The same thing we were talking about previously, the milk fraud.

Q You remember when you were there, don't you?

1 rmrf 8

D'Onofrio-cross

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2 A I don't remember when I was there, I just remember
3 I testified falsely -- 1966, I believe, May or June.

4 Q You testified falsely before them, too?

5 A That is correct.

6 Q And you were sworn? You were a witness?

7 A Yes, sir.

8 Q You raised your right hand and swor to tell the
9 truth?

10 A Yes, sir.

11 Q And then you lied?

12 A That is correct, sir.

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2 Q Mr. Pfingst, we talked about him a little. Did
3 Mr. Pfingst stick you for \$400,000?

4 A About 300-some odd thousand dollars.

5 Q Did you tell that to people, that Pfingst stuck
6 you for \$400,000?

7 A I told that to his attorney, Mr. Marcheso, in the
8 courtroom, that he had stuck me for 300-some odd thousand
9 dollars.

10 Q And you told it to a number of other people?

11 A I may have told it to other people, surely.

12 Q And it is true, he stuck you for \$400,000?

13 A Yes. It came out in the trial.

14 Q He cheated you out of \$400,000?

15 A Yes. He didn't pay his half of the debt back
16 to Bank Hofmann and I had to pay it.

17 Q I think I asked you and you told me you had filed
18 no tax returns of any kind for the years 1967 to 1972.

19 A Yes, sir.

20 Q That was the period during which you accumulated
21 what you described before as assets between six and \$9
22 million?

23 A Yes, sir.

24 Q Do you have any idea of how much you owe the
25 United States Government in income taxes?

rmb-2

D'Onofrio-cross

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2 A It is now coming to light. I have been assessed
3 for the year of 1968 \$1,100,000 plus \$580,000 in penalties.
4 They are working on '69, '70 -- they are working on each
5 year. We have been working on this over the past eight
6 or nine months.

7 Q You have not paid them a dime?

8 A Not yet, sir.

9 Q Do you expect to pay them?

10 A Yes, sir.

11 Q \$1,600,000?

12 A I expect that some day after I get out of jail to
13 go out and earn money and I have an intelligent brain and
14 I expect if I was a smart crook, I could be a smart business-
15 man legally and I could have immense earnings and pay back
16 the Internal Revenue.

17 Q That is your intention?

18 A That is my absolute intention.

19 Q But the fact is since 1965 you have not paid them
20 a dime?

21 A No, no, that is false. Since 1965?

22 Q You heard me say '65.

23 A I wanted to correct myself so I didn't mishear
24 you. I paid taxes in 1965, '66, '67, and I paid partial
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rmb-3

D'Onofrio-cross

1 taxes in 1968.

2 Q You filed a tax return for the year 1967?

3 A Yes, sir.

4 Q How much income did you show?

5 A I don't know, but it is a matter of court record,
6 if they can produce it. Maybe 58, \$60,000, something like
7 that.

8 Q Did you file an honest tax return for '67?

9 A I believe I did. It was the year Mr. Brod paid me
10 about \$55,000 in fees.

11 Q Isn't it a fact that the only money you reported
12 is what had been reported as being paid to you by Mr. Brod?

13 A I don't recall, sir. I don't recall my filed
14 return.

15 Q You had other income, didn't you?

16 A In '67?

17 Q Yes.

18 A I could have. I don't recall.

19 Q Did you have income from Training with the Pros?

20 A '67?

21 Q Yes.

22 A No, sir.

23 Q Didn't you get 50,000 shares of stock for your
24 services?
25

2 A No, that went to Xanadu Properties and R. Scott
3 Barter.

4 Q Those were companies in which you had a proprie-
5 tary interest?

6 A Not companies. One was a person and one was a
7 company. I had no proprietary interest.

8 Q They were your nominees?

9 A I controlled the companies but did not own them,
10 nor did I own Scott Barter.

11 Q Did you show on the income tax return you got
12 those 50,000 shares?

13 A No, they showed it on their returns.

14 Q Did you file returns for them?

15 A Why should I? They were their own people.

16 Q You had nothing to do with it?

17 A No, sir.

18 Q Didn't you tell Mr. Sorkin that you didn't file
19 income tax returns for the years 1967 through 1972?

20 A I may have told him, but I think I made a mistake.
21 I think I filed '67.

22 MR. GOULD: If your Honor please, in putting my
23 question I was acting in reliance on the fourth supplemental
24 bill of particulars furnished to us by Mr. Sorkin in which -
25

rmb-5

D'Onofrio-cross

MR. SORKIN: Your Honor, could this be done at the side bar? If I put '67 I was under the impression, as Mr.D'Onofrio said, that he had not filed in '67.

MR. GOULD: I am under the impression when I get a bill of particulars from the Government I am entitled to ask questions assuming the veracity of it and not to be made to look like a fool or a man taking an unfair advantage of a witness.

THE COURT: I would agree with all of that. So I press my question: What is the problem? Go right ahead.

MR. GOULD: I want Mr. Sorkin to tell me or to concede in front of the jury that the information imparted to him by this witness was that he did not file an income tax return for the year 1967, contrary to what the witness just said.

THE COURT: I would permit Mr. Sorkin to respond, but I don't know the facts of what happened, so I am not going to put words in his mouth.

Do you want to respond to this?

MR.SORKIN: Yes, your Honor. In the fourth supplemental bill of particulars, I think I stated to all defense counsel that to my knowledge --

THE COURT: You must have the document --

MR. GOULD: I have it, your Honor.

rmb-6

D'Onofrio-cross

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2 MR. SORKIN: I think I stated in there, and
3 I will quote "Ramon N. D'Onofrio did not file tax returns
4 for the years 1967 through 1972," and I was under the
5 impression and I think Mr.D'Onofrio told me he didn't file
6 for '67.

7 I don't see really what the problem is. In good
8 faith I told Mr. Gould that.

9 THE COURT: Just a moment.

10 The problem is we want to set the record straight.

11 Is there anything further?

12 MR. GOULD: No. I will just ask the witness
13 another questions.

End 5B 14

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2 Q Didn't you tell Mr. Sorkin that you did not file
3 an income tax return for the year 1968?

4 A He asked me the years --

5 Q Just answer me yes or no.

6 A I did not file I told him.

7 Q You told him you did not file?

8 A My best recollection.

9 Q That wasn't true?

10 A That was my best recollection. It was obviously
11 wrong.

12 Q You told him that within the last two or three
13 months?

14 A Yes, sir.

15 Q Mr.D'Onofrio, I am referring to Page 118 of the
16 transcript in this trial. You testified, did you not, as
17 follows:

18 "Q Do you know Mildred Stoller's middle name?

19 "A Shirley, I think I just answered that.

20 "Q Where did you first learn that?

21 "A I learned it much subsequent to the fact of
22 me learning his code name.

23 "Q Where did you learn that?

24 "A I don't remember if it was at Phil's Bar Mitzvoh
25 or a lawn party that he held that I was present, Mr.Frank

gab-2

D'Onofrio-cross

1 was there, a lot of his friends.

2 "Q His son's Bar Mitzvoh?

3 "A Yes, but I am not sure if it was a party or what,
4 but some gathering at his house."
5

6 You remember giving that testimony, those questions
7 and answers?

8 A Yes, sir, I do.

9 Q That lawn party or Bar Mitzvoh or whatever it was,
10 that was held in what year?

11 A I don't recall, sir.

12 Q Was it held in 1973?

13 A I do not recall.

14 Q Is it possible that you were at Stoller's Bar
15 Mitzvoh party in 1973, or a lawn party?

16 A I don't recall.

17 Q What year was it?

18 A I do not recall, sir.

19 Q Absolutely no recollection --

20 A Of the year, no, sir.

21 Q Could it have been in 1969?

22 A I don't recall, sir.

23 Q But it was at that party that you learned that
24 Stoller's wife's middle name was Shirley, right?

25 A Yes, sir.

1 gab-3

D'Onofrio-cross

2 Q And it was at that party that you learned that
3 that was the name or you understood that that was the name
4 that was used on the coded account?

5 A No, sir, I didn't say that. I said that in the
6 first time I learned her name was Shirley. As to associa-
7 tion, I never made any references at all.

8 Q I see. You remember testifying in the grand jury
9 on July 10, 1973?

10 A Yes, sir.

11 Q You remember being questioned about where the name
12 Shirley came from?

13 A Yes, sir.

14 Q And do you remember what you said?

15 A I said I don't recall, I don't know.

16 Q No recollection at all?

17 A No, sir.

18 Q If I am not right, you correct me. The time you
19 learned about it must have been after July 10, 1973, wasn't
20 it?

21 A No, sir.

22 Q It was before?

23 A I learned her middle name was Shirley. I
24 never associated it in my mind. I had no reason to.

25 Q When you testified before the grand jury in July

1 gab-4

D'Onofrio-cross

718

2 1973, and you were asked about this code name Shirley,
3 where it came from, you had no idea where it came from?

4 A He could have had a dog named Shirley, too.

5 Q I see.

6 A Mine was named after a dog. I wouldn't know
7 that he named -- maybe he didn't name it after the middle
8 initial of his wife or his wife's middle name. Maybe Shirley
9 is the name of his airplane or his boat. The question was
10 -sked me if I knew where the middle name came from, and
11 I would have to say no, truthfully. How could I say it
12 came from some other source?

13 Q When you were asked about it here in this trial
14 you knew where it came from, didn't you?

15 A No. I was asked did I know Mr. Stoller's wife's
16 middle name.

17 Q That is all you were asked?

18 A That is what I recall, sir.

19 Q All right.

20 Now I am referring to Page 179 of the transcript.

21 You remember being asked in this case right here
22 whether you learned the name of the account that was opened
23 for Mr. Frank?

24 A That's correct, sir.

25 Q And you said yes, you knew what the account was?

1 gab-5

D'Onofrio-cross

2 Do you remember saying yes?

3 A Yes, sir.

4 Q And you said it was Lance?

5 A Here, yes, sir.

6 Q That is what you said here in this case?

7 A Yes, sir.

8 Q You remember being asked about that in the grand
9 jury on July 10, 1973?

10 A Yes, sir.

11 Q What did you say there?

12 A I was erroneous. I confused it with Valiant.

13 Q You thought it was something else?

14 A Yes. I had a lot of knight's names, Red Baron,
15 The Black Knight, Valiant, and I confused Lance with Lancer,
16 because whenever I transferred money into Marty account,
17 I used the word Lancer and I confused it with Valiant.

18 Q Did something happen between July 10, 1973, and
19 the other day when you testified here which reminded you
20 that the name of the account was Lance?

21 A Absolutely, yes, sir.

22 Q What happened?

23 A I found some notes on another stock on another
24 deal that showed me transferring funds into the account of
25 Lance, and I turned those notes over the other day in the

1 gab-6

D'Onofrio-cross

2 yellow sheet form of my scratch paper and put them in with some
3 other papers.

4 Q You did turn it over just the other day?

5 A To the Department of Justice, yes, sir.

6 Q Can I have them, please, what you turned over the
7 other day?

8 A It doesn't refer to this case.

9 MR. GOULD: I ask counsel to produce the paper
10 the witness says he turned over the other day.

11 MR. SORKIN: Your Honor --

12 MR. GOULD: Or to concede that there was no such
13 paper.

14 MR. SORKIN: First of all, I object to Mr.
15 Gould muttering under his --

16 MR. GOULD: I am not muttering, I am talking loud
17 and clear.

18 MR. SORKIN: There is no need for him to get
19 excited.

20 MR. GOULD: I am not excited.

21 MR. SORKIN: We will honor the request. He doesn't
22 have to yell, your Honor.

23 MR. GOULD: Let's have it.

24 THE COURT: Gentlemen, if you both quiet down. You
25 are going to look and see if you have it?

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MR. SORKIN: Yes, your Honor.

I don't have my files here. I will certainly
look in my office as I have --

MR. GOULD: I don't know what these are, if
your Honor please.

If they are not his files --

THE COURT: Just a moment. If you would like, Mr.
Gould, we will take a recess now and wherever he has these
or wants to look --

MR. GOULD: That is what I would like, Right
now I would like him to stay in the courtroom and I would
like somebody else to go and find this piece of paper.

MR. SORKIN: That is all very well, your Honor.
These people may not know where my files are.

End 6A

1 6b am qwrfl D'Onofrio-cross

2 THE COURT: Please, gentlemen. Let's simmer down.
3 We will take a recess so that you can make a search as
4 you see fit to produce these notes if they were turned
5 over.

6 Ladies and gentlemen, we will take a recess. I
7 would hope that it will be no longer than ten minutes.

8 MR. GOULD: Excuse me, your Honor. Before we
9 take the recess, may I ask the witness?

10 BY MR. GOULD:

11 Q It was a yellow paper, right?

12 A Yes, sir.

13 Q It was in your handwriting?

14 A It was in my handwriting.

15 Q Does it have a date on it?

16 A I don't recall because there are three sheets
17 of yellow paper.

18 Q All right. Three sheets of yellow paper that
19 you say --

20 MR. SORKIN: I have it, your Honor. I will go down
21 right now.

22 Q It has got a reference to Lance.

23 A Lancer because I put E-R in case I was picked up
24 by federal authorities. I didn't want them to know the code
25 name. I added the word E-R.

MR. GOULD: Let's have it.

1 qwrf 2

D'Onofrio-cross

2 THE COURT: Let's subsist here. As I just said,
3 ladies and gentlemen, we will take a recess. You may file
4 out to your jury room.

5 (Jury absent.)

6 THE WITNESS: Your Honor, I feel very badly. I
7 do not have a left ear. I have been compensated for
8 28 years by the United States Government for this. When
9 I do not hear him or make a mistake on his words and
10 I ask that the United States Attorney inform -- I had this
11 problem in the Pfingst trial. I don't think I should
12 be admonished from him if I don't hear the right word.
13 I only have one ear. I don't want him to admonish me in
14 front of the jury for my bad hearing --

15 THE COURT: I understand.

16 THE WITNESS: --- when we know the problem.

17 THE COURT: I understand you.

18 THE WITNESS: I even ask --

19 THE COURT: Mr. D'Onofrio, I quite agree.

20 If you cannot hear something, I wish you would just state
21 it.

22 THE WITNESS: Sometimes I think I hear it. I
23 would be asking him to repeat every question then.

24 THE COURT: I'm sorry. I know of no way in
25 which another human being can tell when somebody can't

2 hear something.

3 THE WITNESS: He knows this and we all know it.

4 THE COURT: I don't know if he knows it or not.

5 That is the point I'm trying to make. If you cannot
6 hear anything, however, you have every right to say you
7 don't hear it and ask to have it repeated. I don't
8 care how long it takes. You have that right.

9 THE WITNESS: I just try and keep it flowing.
10 Sometimes I make a mistake because I didn't hear right.

11 THE COURT: If you don't hear, I would prefer
12 infinitely that you say so.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Gould and Mr. Sorkin and Mr.
15 Feldshuh and everybody else can't for certain be sure you
16 don't hear something unless you say so.

17 THE WITNESS: Sometimes he starts off low --

18 THE COURT: Believe me, I will protect your rights
19 on that subject at any time no matter how long it takes.

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: All right. Why don't you step outside
22 and relax.

23 (Witness leaves courtroom.)

24 THE COURT: Mr. Sorkin, you do whatever you have
25 to do to find these papers. . .

1 MR. SORKIN: I will, your Honor.

2 THE COURT: And anything else, by the way, that
3 he turned over, whether it is three pieces of yellow
4 foolscap or not which has not yet been turned over to the
5 defense. You see what I'm trying to say?
6

7 MR. SORKIN: Yes.

8 THE COURT: Anything else he turned over on
9 that occasion I want to see.

10 MR. SORKIN: Yes, sir.

11 THE COURT: The yellow foolscap goes to defense
12 counsel forthwith, but if there was anything else, I
13 would like to see it forthwith myself.

14 MR. SORKIN: Yes, your Honor. I have turned
15 it over already to defense counsel. I think Government's
16 Exhibit 71 through 81 was turned over to Mr. Gould
17 on Devon International.

18 MR. GOULD: That's the paper?

19 MR. SORKIN: No, it is not. Some of it
20 has --

21 THE COURT: May I suggest you not dilate any
22 further. It doesn't help you at all. You go down and get
23 these so-called notes or whatever they are and anything
24 else which may have been delivered by Mr. D'Onofrio
25 to you on that day --

MR. SORKIN: Yes, your Honor.

THE COURT: -- in the very close approximation of two to three weeks or one week ago.

I would ask defense counsel to rest gently and say nothing further until this is done.

(Recess.)

(In open court, jury absent.)

THE COURT: Am I to understand that some pieces of paper have been delivered to Mr. Gould by you, Mr. Sorkin?

MR. SORKIN: I thought I was instructed to turn the whole file over to the Court.

THE COURT: No, that wasn't what I said.

MR. SORKIN: I'm sorry. I turn the whole file over to Mr. Gould?

THE COURT: That is very fine, but you apparently missed the point I was trying to make.

Mr. Gould has brought out that the witness delivered what he said were three pages of yellow notes. I was the one who insisted that anything else he might have turned over, even though he hasn't said as much so far, be shown to me.

MR. SORKIN: Okay.

THE COURT: I think Mr. Gould heard me say that, did

1
2 you not, sir?

3 MR. GOULD: Yes, sir, that is what I understand.

4 MR. SORKIN: There happens to be more than three
5 There happens to be five, Mr. Gould.

6 THE COURT: Gentlemen, I will examine this
7 material and I may have it turned over to you if it
8 hasn't already been done so.

9 MR. GOULD: I presume we can go forward with
10 the cross examination of this witness, or does your Honor
11 want us to wait?

12 THE COURT: I will do just as you suggest when
13 you tell me you are ready.

14 MR. GOULD: Just give us a minute to look
15 this over.

16 THE COURT: Surely.

17 MR. GOULD: Thank you, sir.

18 (Pause.)

19 MR. GOULD: I'm ready, your Honor.

20 THE COURT: Gentlemen, before we bring the
21 jury in, I want you all to sit down. I want to make a
22 list on the record so there is no doubt of this.

23 When in your recollection, Mr. Sorkin, did you
24 receive these documents, some of which Mr. Gould has in
25 the form of yellow notes, some of which I have which appear

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to be various documents?

MR.SORKIN: My recollection is, your Honor, this weekend, this past weekend. I don't remember whether it was Saturday or Sunday.

THE COURT: I think at this point is is appropriate for this Court to say to you, Mr. Sorkin, is there anything else this witness has turned over? It strikes me very much like a tooth pulling operation. Every so often somebody stands on the Government's chest and we pull out another thing. We have all these great men sitting by you, Messrs. Doonan and Flannery, and I recognize that Mr. Flannery is a newcomer and he cannot be charged with all of this, apparently. But you and Doonan are no strangers to this business I must assume.

Now, I repeat, I want to know no later than 2:15 today, and counsel for the defense wish to know, what, if anything, other than we already know about may have been delivered by this witness, whether it is today, three weeks ago, three years ago or whenever. You see, it may well be that there has been a bit of gamesmanship being played here by the other side, but I'm past any notions of that, Mr. Sorkin. It is your office's responsibility.

True, frequently we are told in the law it is the

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D'Onofrio-cross

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trial judge's responsibility, but he hasn't got the documents so I never quite cottoned to that notion and I doubt that any reasonable judge or lawyer upon reflection would either these days.

• Don't be bemaused by some of the earlier case law in this field. It is the Government's responsibility really to comply.

See what I'm getting at?

2 (Jury and Mr. D'Onofrio not present in the
3 courtroom.)

4 MR. SORKIN: I certainly do, your Honor.

5 THE COURT: Now, I ask you, for the last time,
6 reflect and use these assistants of yours. I am sorry, but
7 this is not a new requirement on the United States Attorney's
8 office. This is a statute which has been in existence for
9 many, many years.

10 MR. SORKIN: Your Honor, he has turned over other
11 documents to us on a number of other cases and --

12 THE COURT: No, no, no.

13 I am only concerned with Training With The Pros,
14 which is another way of saying our case. Of course he
15 has. You know and so do these defense lawyers that he
16 is named in other cases, including at least one or
17 two before this judge. I know that. Now, stop indulging
18 in all of this irrelevancy. You know what I am talking
19 about, don't you?

20 MR. SORKIN: Yes, your Honor, and I was under
21 the impresssion those were not related to this case.

22 THE COURT: That may be. I am not talking about
23 anything but what I just talked about. Do you want
24 me to repeat it?

25 MR. SORKIN: No, your Honor, I will certainly

2 look.

3 THE COURT: If it has to do with this case and
4 might comply with Section 3500 of Title 18, it is your
5 obligation, not the clerk's, not somebody else down-
6 stairs in your office, not this Judge or any other judge,
7 it is your obligation and you must know it.

8 MR. SORKIN: I do, your Honor.

9 THE COURT: Let me further indicate, gentlemen,
10 that there has been delivered to me some documents. One
11 is a letter by one Alfred P. Herbert, who I will not
12 describe further for obvious reasons, dated June 20, 1973,
13 to Ramon D'Onofrio. The other is a copy of a letter
14 addressed to Mr. Frank back in 1971 from Bank Hofmann
15 and it doesn't appear to have anything to do with the
16 witness' testimony or indeed with Training With The Pros,
17 although perhaps it might.

18 The other is a letter from a man named William
19 Sievert, dated 18 December 1972, written in German, to
20 Mr. D'Onofrio, and though I do not speak German fluently,
21 it would not appear to have anything to do with this man's
22 testimony.

23 The fourth item appears to be in German,
24 a certified copy of the corporate or firm organization
25 papers of that establishment known as D'Onofrio & Feeney AG.

1 I would not consider this to be 3500 material
2 because this witness, as I am sure you will all agree,
3 thankfully did not draft or utter this document.
4

5 However, due to the exigencies of this case and
6 the law, as it is considered and applied from time to time,
7 I am going to mark this folder containing these documents
8 as a Court Exhibit. If, as and when there is any appellate
9 review, the record will be as complete as possible.

10 I will not direct the United States Attorney to
11 turn these documents over at this point because I don't
12 think he has any obligation to do so, from what we have heard
13 so far.

14 Believe me, if we hear anything further from
15 this witness on direct or cross, redirect or recross, I
16 will be free and I hope alert to change my ruling, if need
17 be.

18 We will now proceed to bring in the jury and I
19 will suggest to you, Mr. Sorokin, as that is being done,
20 when one of these matters arises again, rather than having
21 another emotional upheaval here in front of our jury we can
22 take the matter very plainly and I will do my best to accommo-
23 date you and/or Milton Gould, Esq., and/or Sidney Feldshuh,
24 Esq., so please don't repeat what went on here earlier.

25 Thank you.

2 MR. SORKIN: Yes, your Honor.

3 THE COURT: Incidentally, in due course, Mr.
4 Gould, when you are through with these, as I am sure you
5 and Mr. Sorkin will agree they must be marked with a
6 Government's Exhibit 3500 number.

7 MR. GOULD: Yes, I assume so. I will probably
8 mark them, if I use them as I go along.

9 THE COURT: Fair enough.

10 (Jury present, witness D'Onofrio resumes stand.)

11 THE COURT: Now, Mr. D'Onofrio, remember what
12 I said to you earlier. If you feel that you cannot hear one
13 of us, it is your right and obligation, if I may say so,
14 to let us know so that we can handle ourselves accordingly.

15 THE WITNESS: Yes, sir.

16 BY MR. GOULD:

17 Q Mr. D'Onofrio --

18 A I cannot hear you, sir.

19 Q Mr. D'Onofrio, I am going to talk loud just
20 so you hear me --

21 A I hear you normally but sometimes you start
22 softly and get louder. If you talk one tone, I am all
23 right, or if you are up near here, I am all right.

24 Q Mr. Witness, I understand you to say that you did
25 not remember the name of Mr. Frank's code account,

2 the code name of his account --

3 A At the time of the grand jury?

4 Q You must wait, you see --

5 A I thought that was the end of your question.

6 Q Listen, to me carefully. I know you have trouble
7 hearing and I will be very careful, explicit and I will
8 talk a little louder than usual because I don't want any
9 misunderstandings.

10 I understand you to have told his Honor and the
11 jury that you didn't remember the name of Frank's coded
12 account and that you thought it was Prince Valiant, or
13 something like that, but you couldn't remember the name, and
14 that when you went to the grand jury in July 1973 you
15 still didn't remember the name, correct?

16 A Yes, sir.

17 Q That is what you said?

18 A Yes, sir.

19 Q And then I understood you to say that when you
20 testified here the other day you remember that the name
21 was Lance?

22 A Yes, sir.

23 Q And that something had happened between July '73
24 and September of '74 which reminded you of what the name
25 was?

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D'Onofrio-cross

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A Yes, sir.

Q And you said that what it was was something you found in some papers that you turned over to Mr. Sorkin?

A Well, the Government has the papers on the sixth floor, but in perusing them and relevant to another case, I saw these notes of mine.

Q And these were notes --

A And I told Mr. Sorkin, "You know, I made a mistake. Mr. Frank's code name is Lance," and he didn't remark to the mistake that I had previously made.

Q This was a conversation that you had with Mr. Sorkin?

A Last Saturday or the Saturday before last, yes, sir.

Q The Saturday before last or this last Saturday?

A One of the two, I am not sure.

Q Well, try to tell us.

A I think it was the week before last. I am not sure.

Q Your best recollection is that it was the week before last that you had this conversation with Sorkin?

A Yes, sir, but very quickly.

Q Who was present, just you and Mr. Sorkin?

A I think Mr. Flannery may have been present, Mr.

2 Tom Flannery.

3 Q And in this conversation you said to Mr. Sorkin
4 and Mr. Flannery, and we want to be very explicit now --

5 A Not to Mr. Flannery. He was present.

6 Q But he was there?

7 A Yes, but I didn't say it to him.

8 Q He could hear you?

9 A Yes.

10 Q You didn't whisper it to Mr. Sorkin?

11 A No, I spoke normal.

12 Q You said to Sorkin, in the presence of Flannery,
13 and I am trying to quote you and you correct me if I do
14 it improperly, "I made a mistake about the code name for
15 Frank's account. It was Lance "?

16 A That is not what I said. Do you want to know what
17 I said?

18 Q Tell us the words you used.

19 A I says, "This may be of no importance at all or
20 it may be of importance, Mr. Sorkin, but in perusing
21 the files upstairs on another case I have come across some
22 documents in my own handwriting that indicate to me that I
23 may have made a mistake on Marty Frank's code name. So
24 it may be highly possible during cross examination that
25 someone will say, like yourself, 'How come you have a

1 different name now than then?' and I want to be darn sure
2 this is where I recall it from and these are the conditions.
3 and it is in another stock called Galco Leasing Systems
4 and has nothing to do with this case, but I am giving
5 it to you for whatever it means."
6

7 He says, "Fine, just leave it here with the papers."

8 Q Then you didn't hand him any papers, did you?

9 A Those papers.

10 Q How do you know these are them?

11 A They look like it, yellow sheets of paper with
12 my handwriting.

13 MR. GOULD: Well, let's mark this one for
14 identification.

15 (Defendant Stoller Exhibit J marked for
16 identification.)

17 Q How many sheets were there?

18 A 3, 4, or 5, 2, 3, 4, 5, I'm not sure.

19 Q 2 or 5?

20 A I have no recollection. Maybe 3 or 4. They were
21 stapled and I don't know how many you've got.

22 Q You don't know how many I have?

23 A No, sir.

24 Q What do you care what I have? How many do you
25 remember?

1 A I have no interest in what you have.

2 Q How many do you remember?

3 A I gave you that answer.

4 Q How many do you remember?

5 A Have the Court Stenographer read it back.

6 Q No, sir, you tell me or the Court will direct you
7 to tell me and stop telling me what to do.

8 A I answered the question.

9 Q How many?

10 THE WITNESS: Your Honor, have I answered the
11 question?

12 THE COURT: All he is asking you is how many do
13 you now recall turning over to Sorkin.

14 THE WITNESS: He wants me to repeat the answer
15 over and over?

16 THE COURT: I would like to hear it again.

17 A 3 or 4, possibly 5.

18 THE COURT: All right, next question.

19 Q I now show you this paper, which has been
20 marked as Toller Exhibit J, and I ask you if that is one
21 of the papers that you turned over?

22 A Yes, this is one of them.

23 Q You are sure that that is one of them?

24 A I'm quite -- I would have to say that I am
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D'Onofrio-cross

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pretty sure, yes, sir.

Q What is your best recollection?

A My best recollection is that this is one of them.

Q That is one of them. Right.

MR. GOULD: Would you please mark this as
a Stoller exhibit.

(Defendant Stoller's Exhibit K marked for
identification.)

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D'Onofrio-cross

1 Q Now, Mr. D'Onofrio, I am showing you the last page
2 of a paper consisting of 1, 2, 3, 4, 5 sheet, and I ask you
3 if that last page is one of the papers you turned over to
4 Mr. Sorkin a week ago Saturday, when you had the conversa-
5 tion you have testified to?

6 A Can I look at them all?

7 Q No, sir, just the last page.

8 A Yes, I think it was, sir, to my best recollection.

9 Q Aren't you sure about it?

10 A To my best recollection, yes.

11 Q So we have it now that "J" and the last page you
12 are sure about, right?

13 A I am quite sure.

14 Q Look at the front page. Is that one of the papers
15 that you turned over?

16 A Yes, sir.

17 Q Let me have it back, please. Where did you find
18 these papers?

19 A They were in the files that were taken from my
20 office by U.S. marshals and brought to the U. S. Government
21 and they remain on the sixth floor in many cases that I am
22 working on and when Mr. Sorkin is busy or Mr. Doonan is
23 not available to me, I sit in this office working on other
24 cases and there are papers in there regarding other cases
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D'Onofrio-cross

that you were talking about before, these other crimes.

Q And suddenly on Saturday, a week ago Saturday, you discovered these papers?

A No, I had come in on Friday, I believe, and he could not have anything to do with me on Friday, he was too busy, and I went up to the office and went through some more files and found more papers.

Q So a week ago Friday you discovered these papers in the file?

A They have nothing to do with Training With The Pros.

Q Nothing whatever?

A No.

Q Why were you looking at them?

A I was looking at anything, to keep myself busy. I was getting a \$20 witness fee for the day and I went to work. He usually says, "If I can't use you, go up and do some work."

Q All of a sudden you stumbled over these papers?

A Yes, sir.

Q You did not even remember they were there?

A I remembered there were many papers there on many other cases, yes, sir.

Q But these particular papers, you have no recollection

1 rmb-3

D'Onofrio-cross

2 tion of, right?

3 A I had a recollection of the papers, but not per-
4 taining to Training With the Pros.

5 Q What are these papers all about, what did you
6 work them up for?

7 A Would you like to ask each individual item?

8 Q No, in a general way.

9 A A stock manipulation, a transfer of funds to many
10 accounts, the stock manipulation primarily of Galco Leasing
11 Systems.

12 Q These were your own records in your own hand-
13 writing?

14 A I always make records before going to Europe,
15 and after, of where money goes and what direction it goes to, v
16 gets what, howmuch I have to bring back in cash, how much
17 to British Honduras, to London, to the Bahamas.

18 Q You had an account for somebody called Lancer?

19 A No, Lance. I put the "er" in order if someone
20 picked up the papers -- for instance, there were other
21 accounts, I used my own names, like Fish, meaning something
22 else -- to whatever it would mean to me that week, that day.
23 but Lancer, I added the "er" for Mr. Frank's own protection
24 in the event I was picked up with the papers and someone
25 would ask me, or someone could collate another paper.

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rmb-4

D'Onofrio-cross

743

Q When you wrote the word "Lancer" on any papers -

A On that paper.

Q No, no, I mean on other papers. You have written
the word Lancer before?

A No, sir.

Q This is the only paper where you ever wrote the
word Lancer?

A I don't think so. I don't know. That is the
only one I have.

Q In other words, you didn't want to put on this
paper the names of any real accounts?

A Of course I did.

Q You did or didn't?

A At times I did and at times I didn't. There
are some real and then there are some that I add a prefix or
suffix or a stamp. I may have one account in particular I
put his name as orange, because he eats big oranges, but I
know that is orange, and I have to bring him back money. He
buys giant oranges on a fruit stand --

Q That is your own code name?

A For him.

Q You are the only one that knows about it?

A I keep it in my mind.

Q How about Sartorius?

rmb-5

D'Onofrio-cross

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A That is a stock exchange --

Q You didn't disguise that one?

A No.

Q How about Shelly?

A Shelly Salmon, the one I told you I was involved in another stock manipulation -- Shelly, did I put his last name? There are a million Shelleys in this world.

Q Lancer, did you put the name there?

A No. That is Marty's code name and I added the "er" for his protection.

Q These are the papers you turned over to Sorkin?

A Yes, sir.

Q And in these papers a week ago Friday -- you saw that you had written down some time in what year?

A 1971, the time of the Galco manipulation.

Q -- you had written down the words on the second page, "Debit city 20,000, Lancer," and then you remembered that the code name for Frank's account was Lance?

A That's right. Right. I remembered it before, but it didn't come into my mind.

Q Then as soon as you could get to Sorkin on the following day you told him, "I might have made a mistake. The code name was Lance"?

A Amongst some other things I told him.

1 Q You didn't turn any other papers over to him,
2
3 did you?

4 A I gave him a copy of D'Onofrio A.G. Incorpora-
5 tion in the event you said I couldn't identify Mr. Herbert's
6 signature, it was there, notarialized in Zurich. I gave
7 him a copy of a letter from the Swiss police to me as
8 Robert D'Onofrio, when I was cooperating --

9 Q All I asked you --

10 A Let me finish my answer.

11 Q I just asked you if you if you turned any other
12 papers over.

13 A Letters from the Swiss police --

14 MR. SORKIN: Your Honor, he is answering the
15 question.

16 MR. GOULD: I didn't ask for a description of
17 all the stuff he turned over. I just wanted to know if he
18 turned something over. That is all I asked.

19 THE COURT: Now that we have had everybody speaking
20 at once, the point is lost, in any case, so why don't you
21 put the question again and, Mr. D'Onofrio, you answer, as
22 I have told you before, no more and no less than the lawyer
23 asks you.

24 THE WITNESS: Yes, sir.

25 Q Did you turn other papers over to him?

1

A Yes, sir.

2

3

Q Did you turn a file over to him?

4

A No, sir.

5

Q A folder of material?

6

A No, sir.

7

Q Just papers which you found in the files on the sixth floor?

8

9

A That's right.

10

Q You didn't bring anything in?

11

A No, sir -- what do you mean by bring in?

12

Q From outside the building.

13

A No, sir.

14

Q So whatever you found and turned over to him was already in the Government files on the sixth floor?

15

16

A But under various different headings.

17

Q I see. This Amitalia which is referred to in some of these papers --

18

19

A Amitalia Fund.

20

Q Did you want to conceal the name of that from anybody?

21

22

A No, sir, but you don't write out long names. So you put Amitalia.

23

24

Q How about this one here, you look at it, what does that indicate?

25

A Caye Chapel.

rmb-8

D'Onofrio-cross

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Q What is that?

3

A That is a hotel I lost \$150,000 on in British

4

Honduras.

5

Q You didn't want to conceal the name of that?

6

A No. It was a legitimate bankruptcy. I

7

was taken again by someone else.

8

Q How about Royal, did you have an account --

9

A That is Royal Bank of Canada.

10

Q That is a real account?

11

A Yes, sir.

12

Q You didn't try to conceal that?

13

A No, sir.

14

Q Monita.

15

A That is the name of another Swiss client of mine.

16

Q You had an awful lot of them, didn't you?

17

A About twenty.

18

Q And they were people for whom you opened Swiss

19

bank accounts and where you traded the accounts, right?

20

A Not totally correct, no, sir.

21

Q Where am I incorrect?

22

A Not that I traded the accounts. Sometimes they

23

traded them thhmselves.

24

Q You had about 20 accounts in Swiss banks?

25

A Yes, sir.

rmb-9

D'Onofrio-cross

1
2 Q Where you had opened them with powers of attorney
3 from individuals in the United States?

4 A I don't know if I opened 20 accounts or not.

5 Q How many did you open with powers of attorney?

6 A About that, but I don't know -- with powers of
7 attorney for me?

8 Q No, with people -- I will withdraw it. There were
9 at least 20 accounts which had code names with which you
10 were familiar, correct?

11 A Yes, sir.

12 Q Which were the accounts of customers, clients,
13 friends or other connections of yours?

14 A That's correct.

15 Q And you had in some cases powers of attorney from
16 those people to the Bank Hofmann or other Swiss banks
17 authorizing you to deal in those accounts?

18 A From these people, I never had a power of attorney
19 from them.

20 Q How did you open the accounts?

21 A I just gave them the documents, they signed them
22 here and they brought them over and the bank had the power
23 of attorney.

24 Q I see what you mean. You don't know what those
25 documents were?

1 rmb-10

D'Onofrio-cross

2 A Of course I know what they were.

3 Q They were authorizations from the individuals
4 to the bank --

5 A To give them the power.

6 Q I understand. They had the power. But you actually
7 handled the accounts, you gave the buy and sell orders?

8 A I could give instructions only if followed later
9 by the individual's ascertaining of the instructions I had
10 already given in their own handwriting or if they telephoned
11 Mr. Herbert and said, "I authorize Mr.D'Onofrio to make that
12 trade."

End 7B

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Q You mean Herbert would not act on your instructions without getting confirmation from the individuals?

A Sometimes he did, but mostly he would not.

Q Am I not right, sir, that Herbert acted almost regularly in these accounts on your instructions without any communication from the individual who was the beneficial owner?

A And without prior -- without subsequent confirmation?

Q Yes, sir.

A Without subsequent confirmation?

Q That's right.

A Never.

Q Never?

A Rarely ever. I don't want to say never. It is a very difficult word.

Q What kind of subsequent confirmation did they get?

A They would have to either write a letter that I would give them saying that they confirmed it.

Q He would write it to you, wouldn't he? He gave you the confirmations?

A Sometimes he did and sometimes I brought them over in their own handwriting.

Q Wait a second, Mr. D'Onofrio, because I don't

1 want to confuse you and I don't want to get confused.

2 Let's take a typical account.

3 A Yes, sir.

4 Q You had an account called Gypsy, didn't you?

5 A Yes, sir.

6 Q Who gave the instructions to Herbert on Gypsy?

7 A Myself.

8 Q Nobody but you?

9 A It was my account.

10 Q Your account?

11 A Yes, sir.

12 Q And he acted on that account, didn't he? Now
13 you had an account called Pumpkin?

14 A I rarely gave instructions to Mr. Herbert on
15 Gypsy, only to Mr. Ballmer because Mr. Herbert was my partner
16 and Mr. Ballmer always accepted the instructions on Gypsy.

17 MR. GOULD: Mark that for identification, please.

18 A The letters went to Herbert, but Ballmer would
19 follow through.

20 Q Did you give instructions to Herbert or didn't you
21 give instructions to Herbert?

22 A For him to give them to Mr. Ballmer.

23 Q Did you give them to Mr. Herbert or not?

24 A Yes, written.
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Q Written instructions to Herbert?

A Yes.

Q Just like the one I am showing you here, Stoller Exhibit L, right?

A Yes, sir.

Q You wrote hundreds of those to Herbert, didn't you?

A Maybe a thousand.

Q A thousand of those?

A Yes, sir.

Q We do have it that you gave the instructions on these accounts to Herbert?

A Yes, sir.

Q On all those accounts?

A Yes, sir.

xxx

(Defendant Stoller Exhibit L was marked for identification.)

Q And you had an account called Pumpkin, didn't you?

A I was -- that was a nominee account, yes, sir.

Q And you managed that account, you gave the instructions on it?

A Yes, sir.

Q And you had an account called Melita, didn't you?

A Yes, sir.

gab-4

D'Onofrio-cross

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Q And you managed it?

A Yes, sir.

Q And you bought securities and you sold securities in all of those accounts?

A Yes, sir.

Q And you did that before you had anything to do with Training With the Pros, didn't you?

A No, sir.

Q Started afterward?

A Maybe after, about the same time, I am not sure.

Q Tell us your best recollection.

A About the same time, sir.

Q About the same time that you say you had all these conversations with Stoller and Allen about Training with the Pros, you opened how many accounts in Bank Hofmann?

A Many.

Q How many, 20, 30?

A Eight, 9, 10 or 12 at that time.

Q And over the next few months how many?

A Another 3, 4 or 5.

Q And Stoller and Allen had nothing to do with those accounts, did they?

A No, sir.

Q You managed them?

gab-5

D'Onofrio-cross

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A Yes, sir.

Q You bought, you sold and you got the confirmations from the bank, didn't you?

A I answered that no, not in all instances, sir.

Q In the majority of instances with respect to these managed accounts, you got the confirmations from Bank Hofmann?

A The confirmations coming back, yes, sir.

Q You just told me no, didn't you?

A No, you said I bought and sold for them.

Q I said to you, you got the confirmations from the banks, and you said no, didn't you?

A You give a question that requires a yes on one end of it and a no on the other. It is very difficult to answer.

Q I am confusing you, is that right?

A By giving me a question that takes a yes and a no answer.

Q Now, sir, I want you to tell me whether it is not the fact that you managed these accounts, you bought the securities or gave orders to buy the securities, you sold the securities and you got the confirmations?

A That is a fair statement, sir.

Q That is right. Thousands of transactions?

A Yes, sir.

Q And in none of those transactions -- we will

2 allowed the bank to use him for a phoney representation,
3 to cover me up from not getting caught in that, and he
4 recovered about \$55,000 or more for me.

5 In the Galco Leasing Systems, Mr. Frank was involved.
6 He received a payoff of \$20,000 from me.

7 Q Do you remember the question I asked you?

8 A Yes, sir.

9 Q What was the question I asked you?

10 A You asked me in any other stocks were these men
11 involved with me in these transactions with the bank.

12 Q That is the way you remember my question?

13 A Yes, sir.

14 Q All right. I don't want to cut you off. Do you
15 have more you want to tell?

16 A No, sir.

17 Q How many times have you given the answer you just
18 gave me in talking with the office of the United States
19 Attorney?

20 A Never.

21 Q Never? Did you have any rehearsals with them?

22 A Rehearsals, sir?

23 Q Yes, sir. Sessions --

24 A What do you mean by rehearsals?

25 Q I am going to tell you what I mean. Sessions in.

1 gab-8

D'Onofrio-cross

2 which you sat with them and they told you what questions
3 are going to be put to you --

4 A By you?

5 Q By me.

6 A Never.

7 Q Or by defense counsel without identifying me.

8 A No, they never told me. They had no idea of what
9 defense counsel was going to say to me.

10 Q That is what they told you?

11 A I asked questions, "What do you think they are going
12 to ask me?"

13 They said, "We have no idea."

14 Q How many sessions did you have in which you dis-
15 cussed with them what you were going to say in response to their
16 questions?

17 A To their questions?

18 Q Yes.

19 A About 7, 8 or 9.

20 Q Seven, 8 or 9?

21 A Yes, but they are small ones sometimes and longer
22 ones others.

23 Q How many hours did you spend going over your testi-
24 mony?

25 A I can't calculate the hours.

1 gab-9

D'Onofrio-cross

2 Q Ten, 20?

3 A I said I can't calculate it.

4 Q More than 10?

5 A Sir, you can say could it be more than 100.

6 Q Could it have been 100?

7 A I can't calculate it.

8 Q You have no recollection of how many hours you

9 spent going over your testimony with Mr. Sorkin and

10 Mr. Doonan?

11 A Not in hours, no. In days I told you, eight or

12 nine. It is split up with other cases.

13 Q You mean eight or nine full days?

14 A No, sir, some half days, some quarter days, some

15 full days. I know three or four full Saturdays with Mr.

16 Sorkin. That I am sure of.

17 Q Let's stick with that. In those three or four full

18 Saturdays he asked you questions and you gave him answers,

19 right?

20 A No, sir, he didn't ask me -- yes, there were

21 questions and answers.

22 Q Really?

23 A Yes, sir, but not questions that he thought you

24 were going to ask me.

25 Q No, we are talking now about something else.

1 gab-10

D'Onofrio-cross

2 You told me they never talked to you about what I was going
3 to ask you.

4 A No, I asked him, what are you going to ask me.

5 He said, "We don't know."

6 I said, "What do I" -- I am sorry. You didn't
7 ask me a question.

8 Q I am assuming now that you are telling me what
9 happened, you are telling it to me right.

10 You had no preparation whatever for cross-examina-
11 tion?

12 A Practically zero. The only thing I got as prepara-
13 tion for cross-examination -- I said "What happens if the
14 defense counsels bring up prior criminal acts of these defend-
15 ants?"

16 He says, "If they bring it up, you just answer the
17 questions straight, but do not bring up any prior criminal
18 acts while we are asking you questions."

19 Q Only if the cross --

20 A If you bring it up, "You speak the truth and tell
21 them."

22 Q I haven't brought it up, have I?

23 A Yes, you did, sir.

24 Q I did? I brought up prior criminal acts?

25 A You did the other day.

1 gab-11

D'Onofrio-cross

2 Q But you didn't tell me anything?

3 A Yes, you were mentioning stocks, was this one
4 involved, was that one involved at one point. You were
5 fortunate you didn't ask who the other persons were involved
6 and I didn't have to answer you.

7 Q So that much preparation you had?

8 A And once you asked me, I said "Resource Control."
9 Everybody jumped up and it stopped.

10 Q Let's get back to how much preparation you had
11 for your direct.

12 A For my direct --

13 Q Your direct testimony.

14 A I told you about four full days.

15 Q Four full Saturdays?

16 A Plus some -- another three, four or five days of
17 half, quarters, parts.

18 Q What did you do, go over the same ground over and
19 over again?

20 A Not really. He asked me a question and I would
21 give him an answer. I have had a lot of time in between the
22 weeks to think. Sometimes I would expand my answers,
23 sometimes -- I don't think I had any deletions, mostly
24 expansive.

25 Q Adding to it?

1 gab-12

D'Onofrio-cross

2 A Because I could remember. Once you are in the
3 mood and the tempo of a previous act of crime of a million
4 dollars -- I mean, after all, a million dollars is like
5 the Bank of England, two million, it is the biggest in the
6 world. It is a big caper. You can remember a lot about it.
7 I can't remember much about a \$100,000 one.

8 Q You only remember big ones?

9 A I only remember a million dollars. I could
10 remember that more.

11 Q I want to get finished with you. Just listen to
12 my question.

13 The first Saturday you came in you went over the
14 whole story, right?

15 A I don't think we got from beginning to end, only
16 once did we go from beginning to end.

17 Q The first Saturday you went over it you were there
18 all day?

19 A But not beginning to end. I only got halfway.
20 He got interrupted, he got phone calls, he was on duty or
21 something, had a lunch break.

22 Q You did as much as you could that day?

23 A We worked as hard as we could.

24 Q Then you came back another Saturday?
25

1 gab-13

D'Onofrio-cross

2 A Yes, sir.

3 Q Did you go over the same stuff again?

4 A Direct testimony, yes, sir.

5 Q That's right. The same stuff you had done the
6 previous Saturday?7 A But I probably expanded one or two sentences in
8 between that I recall.

9 Q You remembered new stuff on the second Saturday?

10 A Because I am thinking all week. I had nothing
11 else to think about. They didn't bring me in on any other
12 crimes. No other U. S. Attorney was allowed to bother me.
13 If the SEC called me, Mr. Sorkin said, "Leave the guy alone.
14 He is in the middle of getting ready for a trial."15 So I could think about this. Prior to that I
16 couldn't think about it.

17 Q All right.

18 Then the third Saturday you went over the same
19 ground again, didn't you?

20 A Yes, sir.

21 Q And you added more?

22 A I don't know if I added any more.

23 Q I thought you told us --

24 A I said each time I probably would add a sentence.

25 Q You know --

1 gab-14

D'Onofrio-cross

2 A Or a phrase.

3 Q I see. You changed phrases, right?

4 A Me, I would change.

5 Q You changed them?

6 A He would make notes. I don't know what he did.

7 Q He made notes of your changes?

8 A I don't know if he made notes of my changes.

9 Q Didn't you see him making notes of your changes?

10 A I can't read upside down and backwards.

11 Q All right, I understand. You saw he was writing
12 something?

13 A I saw he was writing.

14 Q And you don't know what he wrote?

15 A I think he was making notes.

16 Q In other words, on that Saturday, which was about
17 a month ago, the first Saturday?

18 A Yes, sir.

19 Q About a month ago you sat with Mr. Sorkin and you
20 discussed your testimony and he made notes?

21 A He always made notes.

22 Q I see. Then the second Saturday you came back and
23 you added some things and he made notes of that?

24 A Yes, sir.

25 Q The first Saturday was about a month ago in August.

1 gab-15

D'Onofrio-cross

2 right?

3 A Yes, sir.

4 Q And the second Saturday was a week later, also
5 in August, correct?

6 A Yes, sir.

7 Q Then you came back on the third Saturday and he
8 made some notes and again you added things?

9 A Are you saying that?

10 Q I am asking you.

11 A Ask me the questions. You are always telling me
12 things.

13 Q That is my style.

14 A My style is giving it back to you.

15 Q I know. You do. I am very upset by that.

16 A I am not upset by you.

17 Q I am by you.

18 A I don't want to tackle with you.

19 Q No, no. I just want to know. The second Saturday
20 we know he made changes, he made notes of your changes, correct?

21 A I don't know if he made notes of my changes. He
22 made notes all the time.

23 Q He made notes all the time, right, of what you were
24 saying?

25 A He may have been making notes of what other things
that were on his mind for his own part in this trial.

1 8b am qwrfl D'Onofrio-cross

2 Q I see.

3 While he was talking to you and asking you the
4 questions that were going to be asked --

5 A He may have been making notes concerning himself.

6 Q You mean the notes he was making had nothing
7 to do with what you were saying?

8 A No, Training With The Pros, but maybe concerning
9 some strategy of his or what would be going in here. I
10 don't know what it could be.

11 Q You are not worried about whether he made any
12 notes about what you were saying, are you?

13 A I hope he made notes about what I was saying.

14 Q Really? And he made notes about a month ago
15 in August, correct?

16 Would you recognize his notes if you saw them?

17 A I would recognize his handwriting, but I cannot
18 read it. He writes like a chicken. So don't -- I don't
19 think you are going to be able to read it either. He's
20 very difficult to read. He's handed me documents to
21 read. I said, "Don't give me the documents, I can't read
22 your writing."

23 MR. GOULD: And was that done in August?

24 MR. SORKIN: There are 19 pages here, Mr. Gould.

25 MR. GOULD: Was any one done in August? I would

like counsel to represent to the Court that any one of those was done in August. If it was, I will be glad to subside. Just tell me which were done in August.

MR. SORKIN: If your Honor will just give me a moment, please.

(Pause.)

MR. SORKIN: Your Honor, shall I represent this to the Court now? I'm quite sure that the last three pages were definitely not in August and it is very possible that -- I didn't date any of these. It is very possible --

MR. GOULD: I'm astonished.

MR. SORKIN: I'm sorry if you are astonished, Mr. Gould.

MR. GOULD: I am astonished. I would --

THE COURT: Gentlemen, please. Let's not make any of these comments. It is not helping.

MR. GOULD: I'm sorry.

THE COURT: Whether you are sorry or surprised is of no moment. Finish what you were about to say in response to the legitimate question of counsel.

MR. SORKIN: Yes, your Honor. I'm quite sure that most of these notes, probably came up from one to maybe 12, were not made in August. It is possible all of them were not made in August.

2 MR. GOULD: I would like counsel's representation
3 as to whether there is a single page in that exhibit
4 which was made in August.

5 MR. SORKIN: Your Honor, I would say of the 19
6 pages, maybe only the last pages 14 to 15 were made in
7 August. The rest were prior to August.

8 MR. GOULD: There are no dates, your Honor.

9 MR. SORKIN: On the last three pages, Mr. Gould,
10 there are dates.

11 MR. GOULD: Okay, the last three pages.
12 Show me the dates, please.

13 MR. SORKIN: The last three pages are dated
14 11-15-73.

15 MR. GOULD: I'm confused. Are you telling me
16 the last three pages were made in August?

17 MR. SORKIN: No, that is not what I said.

18 THE COURT: Apparently your pages are not numbered
19 either.

20 MR. SORKIN: They are numbered, your Honor.

21 THE COURT: Would you just physically point out
22 to inquiring counsel the pages so we can bring an
23 end to this unseemly affair?

24 MR. SORKIN: Yes, your Honor. I would say perhaps
25 pages -- the numbered pages 12, 13, 14 and one line on 15

2 were maybe made in August.

3 MR. GOULD: That is not good enough, your Honor.
4 I'm sorry. This is 3500 material. We are entitled to a
5 representation, not a maybe or a perhaps.

6 MR. SORKIN: That is the best I can do, I'm sorry.

7 THE COURT: May I say, gentlemen, that I am
8 not privv to the notekeeping habits of any of you.
9 Therefore, I am not about to say anything further. If he
10 doesn't know the date, he doesn't know the date. If you can
11 suggest to me, Mr. Gould, what other process might be
12 humanly and practically available to you, I will be glad
13 to hear them. Let's make it quick.

14 MR. GOULD: I'm doing my best, your Honor.
15 I don't think your Honor can feel I'm delaying this process
16 in view of what has occurred. I would say the first
17 step is the production of the originals of which I have
18 the Xerox.

19 THE COURT: I would certainly back you up on that.
20 But you are missing the point that I'm trying to make.

21 The lawyer for the Government says he doesn't
22 know for sure. I don't believe that this Court is powerless
23 to help you specify, because as I say, I don't know
24 anything further to do on that phase of the subject.

25 MR. GOULD: All I'm seeking, your Honor, now is

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to see if I can conscientiously accept the representation
that maybe certain pages -- 12, you say --

MR. SORKIN: The pages that are numbered 12,
13, 14 and one line on 15.

THE COURT: Ladies and gentlemen of the jury, in
view of the hour I see no purpose to hold you up on
this matter.

We will resume at 2:15. It is now about five to
1:00. Have a good luncheon.

(Jury absent.)

THE COURT: All right, Mr. D'Onofrio, 2:15, sir.

(Witness leaves courtroom.)

MR. GOULD: If your Honor please, I have never
seen such a handling of 3500 material in my life.

THE COURT: Mr. Gould, I would not argue with you
except I want you to understand unequivocally from me
that I am powerless to instruct people how to keep notes.
I appreciate that various personages, mostly lawyers, ask
judges to do all kinds of things. I cannot account for
one's notekeeping habits. I can say that my own are probably
less than credible in your mind, too. What does that prove?

My obligation is to assist you in getting what
you want, but I cannot go so far as to sit here and
condemn a man for his notekeeping habits. Whatever I may
think, what was done, was done. Therefore, I am exceedingly

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2 unnerved and perplexed that one of your experience generally
3 and experience before this Judge would persist in the
4 quaint notion that I can do the impossible.

5 I'm getting a little fed up to hear it from you,
6 frankly.

7 MR. GOULD: I don't think your Honor can do any-
8 thing about it --

9 THE COURT: All right. Let's hear --

10 MR. GOULD: Except to assist me in doing what
11 I conceive to be my duty, which is to get to the bottom
12 of this 3500 material.

13 THE COURT: Fine.

14 MR. GOULD: Let me show you how cavalier and
15 careless --

16 THE COURT: Please, Mr. Gould. We are faced with
17 a set of circumstances which in the fullness of hindsight
18 may seem to you to be a little less than perfect or a
19 little different than you would do it. I quite agree. I
20 would hopefully do it differently.

21 I can only ask him to produce what he claims are
22 his notes. I think it is unfair of you to suggest to me
23 that I can do more.

24 MR. GOULD: Except to understand that I am
25 facing a situation in which the Government has done less than

1 qwf 7 D'Onofrio-cross
2 its duty in the delivery of 3500 material.

3 THE COURT: I don't follow that.

4 MR. GOULD: I will show your Honor in a
5 moment why I say that. You have just heard a representation
6 from this man, having looked at this without preparation,
7 and he says to the Court, well maybe or perhaps pages 12 --

8 MR. SORKIN: 12, 13, 14 and one line on 15.

9 MR. GOULD: Very meticulous. The first entry on
10 page 12 in his handwriting is No. 3. The last entry on
11 page 11 is No. 2. Obviously 11 was prepared at the same
12 time and --

13 THE COURT: Just a minute. Excuse me.

14 (Pause.)

15 THE COURT: All right.

16 Let's go back.

17 MR. GOULD: You see, he says to you, well,
18 page 12 and page 13 and so on --

19 THE COURT: Mr. Gould, can we get to the bottom
20 of this? I do not have copies of his notes.

21 MR. GOULD: I'm very sorry, your Honor, I thought
22 you did.

23 THE COURT: I do not have copies of anything in
24 this case. I have already observed that at least once in
25 your hearing and that of other counsel. Second of all, it is

not the function of you or me to reconstruct his notes, bad as you or I may think they are.

My function is to back you up in seeing to it that you get anything or everything that fits with the statute or any other rulings of the Court. But I persist in the quaint notion that today we are not going to rewrite Mr. Sorkin's notes.

MR. GOULD: I disagree with your Honor. I think the Court has both the power and the obligation to see that the Government complies honestly and conscientiously with the provisions of Section 3500.

THE COURT: I agree with you.

MR. GOULD: When new stuff keeps popping up --

THE COURT: This is not new stuff. This has been in your hands and that of other defense counsel for quite some time.

MR. GOULD: And never yet identified except now by the witness --

THE COURT: Mr. Gould, the point I keep trying to make is, it seems to me from what you have established here that Sorkin does not date his notes. I'm sorry, but there is nothing I can do about that.

It is not my purpose to manufacture dates or --

MR. GOULD: He does date his notes. Here is one

2 with a date on it.

3 THE COURT: So he dated one. I will show you my
4 notebook if you would like. I have some notes that I date,
5 sometimes I don't date them.

6 MR. GOULD: I am saying to the Court next
7 with my protest that the handling of 3500 material has
8 been at the best cavalier.

9 THE COURT: You have made that point ad nauseum,
10 echoed faithfully by your co-counsel. I have spent more
11 time in this case trying to assist you and Mr. Feldshuh in
12 getting documents which have not been turned over than I
13 can recall. I agree with you there, but that has
14 nothing to do with the present problem as I understand it.

15 I cannot put myself in this lawyer's mind and
16 tell you something he cannot tell you.

17 I am getting awfully tired of what I consider to
18 be a bootless colloquy at best.

19 You don't seem or you don't choose to get my
20 point, and for that I am sorry.

21 MR. GOULD: I do my best. Your Honor knows I
22 regard whatever you tell me with the greatest respect.

23 THE COURT: Perhaps so.

24 MR. GOULD: Maybe I'm not making my point.

25 My point is, your Honor, when we finally understand

2 what it is he is talking about, and I tried to find out
3 whether this mass of stuff that he has given us --

4 THE COURT: This being --

5 MR. GOULD: This being 3501-K. When I tried to
6 find out whether this is what the witness is talking about,
7 he says to me, well, from page 12 on. Now, that is
8 either careless --

9 THE COURT: Mr. Gould, I would agree with you
10 privately, but what am I going to do about it? Am I going
11 to remake Ira Sorkin? I cannot play God.

12 MR. GOULD: All I can do, your Honor, is ask you
13 to give me a little latitude. I hoped to be finished
14 with this man long since.

15 THE COURT: That is your choice. I'm not stopping
16 you.

17 MR. GOULD: I'm very unhappy about the length of
18 this cross examination. The only thing I can do, I'll
19 try to get back and get from the witness on the basis of
20 the material in here whether that has happened in August.

21 THE COURT: Over many years of experience in
22 dealing with you I have great affection and respect. I have
23 never thought that you or any lawyer of lesser ability
24 would ever come before me and make the representations
25 or claims you are now making, to wit, something that I can

2 do to reconstruct a lawyer's mind or memory.

3 MR. GOULD: I agree with you, there is nothing you
4 can do.

5 THE COURT: Then I wish you wouldn't keep pressing
6 me. That is what is irritating me.

7 MR. GOULD: There isn't anything the Court can
8 do in this case?

9 THE COURT: I don't see how I can remake notes
10 for another man. I was not there, I assure you, and you
11 know that.

12 MR. GOULD: All right.

13 THE COURT: There is one other problem.

14 MR. GOULD: I will subside on that subject.

15 THE COURT: No, let me not subside on one other
16 point.

17 Just because a witness presently in the box tells
18 you and me and everybody else assembled that his memory
19 is such and such doesn't necessarily mean that that
20 is the gospel. You of all people would be certain to agree
21 with that, I'm sure.

22 MR. GOULD: Indeed, your Honor.

23 THE COURT: If you feel that there is something
24 that has not been produced, and you know and I know that
25 I have been part of the effort to stand on the chest of

1 Mr. Sorkin from time to time to extricate an additional
2 writing for you and for Feldshuh. I would be glad to
3 try again. I don't see that to be your present inquiry.
4 If I am wrong, correct me.
5

6 MR. GOULD: No, your Honor. Your Honor is quite
7 right. I think I have overstated my position perhaps from
8 an excess of indignation of the way this case has been
9 handled and prepared by the Government. There is nothing
10 your Honor can do about it?

11 THE COURT: There is one other thing.

12 I want you to remember, Mr. Sorkin, something I
13 said earlier before this latest nasty little contretemps
14 arose. Perhaps I better press it for your sake and that of
15 the United States Attorney's office, which I consider to be
16 primarily responsible for acting under this statute for
17 very obvious reasons. Is there by chance any other notes
18 or jots which, although you can very well say are not
19 produceable, you nevertheless might have been taking or
20 making when the witness, D'Onofrio, was in your office sometime
21 during August or, indeed, at any other time?

22 MR. SORKIN: The only other notes that I was
23 making while I was talking to Mr. D'Onofrio in the last
24 several weeks were on witness sheets that I had previously
25 prepared based upon these notes. Many of the notes were

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of D'Onofrio after Mr. D'Onofrio left my office. They were
revised by me.

THE COURT: No.

MR. SORKIN: That is it, your Honor.

THE COURT: I assume even Mr. Gould and Mr.
Feldshuh would agree with me that you have every right to
do what they have every right and do do. That is not my
point.

Anything that you may have been jotting, even if
you were doodling in the presence of this witness,
D'Onofrio, who, as we all know, is a ver voluble fellow.

MR. SORKIN: No, your Honor, no other notes I am
aware than what was turned over to Mr. Gould.

THE COURT: I have asked you on behalf of the
defense and on behalf of your own interests as well to search
today and use the services of anybody you can.

Now, gentlemen, there is another matter in which
I'm going to make a complaint to you.

Off the record.

(Discussion off the record.)

(Luncheon recess.)

(In open court; jury absent.);

MR. SORKIN: Your Honor, let me report what I have done. We went back to our offices. Mr. Doonan went up to the 6th floor where we have file cabinets, documents Mr. D'Onofrio turned over to us, and I went back to my office with Mr. Flanner and we looked through the Training With the Pros case, the Sensory Systems case, which is the name change, the Pfingst case, and we have pulled out what we feel is virtually every document that either has Mr. D'Onofrio's name on it or Training With the Pros' name on it.

It is our belief, your Honor, that these documents do not constitute 3500 material, and we are prepared to turn them over to the Court at this time for inspection.

We even have stock certificates of Training With the Pros which Mr. Doonan pulled out.

THE COURT: For the moment, I would like to inquire, in any of this material which you just described are there any notes by you or any other Government lawyer or agent?

MR. SORKIN: No, sir.

THE COURT: In other words, at least Mr. Gould should be satisfied that you are representing that you could find no other notes of yourself or any other Government lawyer particularly having to do with Mr. D'Onofrio, but,

1 rmb-2

2 indeed, in any respect?

3 MR. SORKIN: That is correct, your Honor. I
4 will point out to the Court that there are documents in here
5 which we did pull from another file, which we have under
6 the Xanadu file, and since Mr. Gould dealt on it extensively
7 on cross-examination as to Mr. D'Onofrio's net worth, we have
8 certain documents turned over to us by Muriel Barder some
9 time ago, and I don't think Mr. D'Onofrio even knows we
10 have them, and it is our position that is not 3500 material,
11 but since Mr. Gould dwelt on it on cross-examination, we
12 are presenting it to the Court.

13 THE COURT: Let us mark this folder the next Court
14 exhibit.

15 (Court Exhibit 2 was marked for identification.)

16 THE COURT: I will examine these and, Mr.
17 Gould, unless you disagree, I suggest we go ahead with your
18 cross. I assure you if I find anything in there I think
19 should be produced not only under 3500 material or indeed
20 for any other reason, I will do that before the witness is
21 released.

22 MR. GOULD: I would like to make this suggestion,
23 your Honor: I may be finished with him before you get
24 a chance to examine it and why don't I finish up and if
25 your Honor finds anything appropriate, we will call him

1 rmb-3

2 back.

3 I imagine he could be brought back.

4 THE COURT: Right.

5 MR. SORKIN: Your Honor, also included in this
6 is a transcript of one of Mr. D'Onofrio's testimony before
7 the SEC. It is 73 pages long and I think Pages 46 through
8 51 -- the same Paul Strauch is mentioned. He was one of
9 Mr. D'Onofrio's nominees. The name is mentioned in connec-
10 tion with another stock.

11 MR. GOULD: Why impose on the Court the burden
12 of reading 76 pages of testimony if that is the only basis
13 for doing it?

14 MR. SORKIN: I am trying to comply with your
15 direction, your Honor.

16 MR. GOULD: Your Honor doesn't want all that
17 junk if it has nothing to do with the case.

18 THE COURT: I want to make sure it doesn't, so
19 I assume the burden.

20 Bring in the jury.

21 (Jury present.)

22 R A M O N N. D' O N O F R I O resumed.

23 CROSS-EXAMINATION (continued)

24 BY MR. GOULD:

25 Q Mr. Witness, I want to come back to this occasion

1 rmb-4 D'Onofrio-cross
2 a week ago last Saturday when you found this piece of paper
3 which reminded you that the code name for Frank's account
4 was Lance.

5 That is what I am addressing myself to. Am I
6 clear?

7 A That doesn't remind me, but verified to my memory.

8 Q You mean you knew it all the time?

9 A No, sir, it verified my memory.

10 Q Didn't you tell us this morning that you saw it
11 and then you remembered that when you had said it was Prince
12 Valiant or something --

13 A In the grand jury, yes.

14 Q That was wrong?

15 A Yes. I knew it before but I didn't recall it in
16 the grand jury.

17 Q In the grand jury you thought it was Prince
18 Valiant?

19 A Yes.

20 Q You met with Mr. Sorkin and he was busy on Friday
21 when you found it and on that Saturday you brought that to his
22 attention, among other things?

23 A Yes.

24 Q What did he say to you when you said, "Look at
25 this piece of paper. This reminds me that the code name

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2 for Frank's account was Lance, not Prince Valiant, I made
3 a mistake"?

4 Is that what you said to him, in substance?

5 A You want to know what I said to him?

6 Q In substance, briefly. In substance, you said,
7 "Mr.Sorkin, I have just seen this and that reminds me that
8 the code name for Frank's account was Lance, not Prince
9 Valiant." Isn't that the substance of it?

10 A I would prefer to tell you what I said to him.

11 Q Do it.

12 A I said, "Mr.Sorkin, this group of papers I have
13 is on another case entirely, but it indicates here that the
14 code name for Martin Frank is Lance and that in the event,"
15 because I know I had testified wrongly in the grand jury
16 for Prince Valiant -- "in the event the defense attorneys
17 cross-examine me and want to at some point say to me, when
18 did I recall this or when did it happen, at least now I have
19 it down in my mind when I did recall it precisely and it is
20 in my own handwriting, and he may never ask, but these are
21 the papers for your disposition."

22 Q He said, "Fine, I am glad that you" --

23 A He didn't say that. He was so busy getting into
24 the case, he said, "I am going to put the papers on the side,
25 and I think he may have put them in a folder of his own, and
I don't think he replied to me.

End 1A

2 Q Didn't he make a note that the right word was
3 Lance and not Prince Valiant?

4 A I don't recall that.

5 Q Did he say anything?

6 A I don't think he said a thing. He was so darn
7 enveloped with getting ready for this trial that he put
8 the things aside and the documents I gave him and he
9 said, "Don't interrupt me."

10 Q Was he surprised to learn it was Lance, not Prince
11 Valiant?

12 A I think he knew the word was Lance, but not from
13 my source.

14 Q He knew it from a source other than you?

15 A I would assume so, because he didn't act surprised.

16 Q Didn't he say, "I know it is Lance"?

17 A No, sir.

18 Q Didn't he say that?

19 A No.

20 Q We understand, then, that up until the time
21 you had that conversation with Mr. Sorkin you thought
22 it was Prince Valiant and not Lance?

23 A No, I knew it was Lance. I only made a mistake
24 in the grand jury by saying it was Prince Valiant.

25 Q I thought you found out you made the mistake

2 when you found these papers the other day?

3 A No, no. That was for verification, in case such
4 astute, eminent counsel such as yourself would be putting
5 me through precisely what you are putting me through now,
6 that I have a document in my own handwriting and I don't
7 have to resort to memory.

8 Q Have you read the indictment in this case?

9 A No, sir.

10 Q Never looked at it?

11 A No, sir.

12 Q Never shown to you?

13 A It was shown to me, I never read it.

14 Q Not interested in it?

15 A I have no interest in it.

16 Q You testified in this case, sir, that it was
17 Joe Pfinst who initially presented the Training With The
18 Pros proposition to Stoller and Allen, isn't that right?

19 A Yes, sir.

20 Q And I am referring to pages 135 to 139 of your
21 testimony. You remember what you said, I don't have to
22 read it.

23 A In substance, yes. I remember the substance --

24 Q Well, the substance was that you and Joe Pfinst
25 were playing what you called Heckel & Heckel?

2 MR. SORKIN: I object to Mr. Gould testifying,
3 your Honor.

4 MR. GOULD: He is right. I will read it.

5 Q "Do you remember testifying that on the airplane
6 you had a conversation with Pfingst and then you told about
7 the conversation you and Pfingst had and there was an
8 interruption --"

9 Was there any mention of Training With The Pros
10 in the conversation?

11 A When Mr. Pfingst said to me, have you talked to
12 the boys -- he called Mr Allen and Mr. Stoller the boys --
13 that was his vernacular or words when referring to them.
14 I said no, I have not spoken with the boys about Training
15 With The Pros, which I want you to understand is still
16 M&H Studios, but I am referring to it as Training With
17 The Pros.

18 Q Go ahead.

19 A He said why not, Ray?

20 I said, "You don't understand" -- and I will
21 skip the rest of the answer. If Mr. Sorkin wants it, he
22 can read it.

23 I go down to the middle of page 138, same
24 conversation, he says, "I am a lawyer. Suppose I bring
25 the deal up."

1 He says, "You and I play Heckle & Jeckle and
2 you act like you never even knew I was bring it up.
3 When we get to Switzerland at the right moment at the right
4 time -- make sure the right moment is after we closed our
5 deal and collected our money."
6

7 I says, "I buy the Heckle & Jeckle idea. I think
8 it is a good idea and we will play the game that way."

9 Q Mr. D'Onofrio, when you got to Switzerland did
10 there come a time when you met Mr. Stoller, Mr. Allen,
11 Mr. Pfingst at a hotel called Baur au Lac?

12 A Yes, there did.

13 Q Did you have a conversation with them, "And you
14 gave a date, and then you testified"-- I am leaving
15 out about the order --

16 A Am I entitled to hear that, your Honor?

17 THE COURT: You are entitled to look at it.

18 Q Do you want to look at it? You told what Allen
19 ordered --

20 A Well, I didn't hear you.

21 THE WITNESS: Your Honor, you asked me to speak
22 up if I didn't hear.

23 THE COURT: That is correct, go ahead.

24 Q "Q Tell us what was said and by whom?

25 "A Mr. Pfingst, while the four of us were sitting

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there, looked and referred to Jerry Allen and he said, Jerry, have you heard about Ray's new deal, Training With The Pros, and Jerry said, no, I haven't heard about it, I said, it is a fantastic new deal," and so on.

Now, that is the testimony you gave in this case?

A Yes, sir.

Q And you remembered where the conversation took place, no problem about it, isn't that right?

A To my best recollection.

Q You remembered what each one said to the other?

A In substance.

Q You gave me exact words, didn't you?

A As best I could recall.

Q You didn't tell us anything you didn't remember about the conversation?

A No. I told you it is subject always to adjectives adverbs, prepositions. If I want to perform a memory test, you would say I memorized everything. So I have not memorized. I am subject to fallibility, with adjectives, but not with the substance of the deal and the conversations, not with the substance.

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2 Q You didn't have any hesitation about telling the
3 jury the exact words that Pfingst said to Jerry Allen and
4 Phil Stoller?

5 A As I recall them.

6 Q Do you have any doubt now that it was Pfingst
7 who started the conversation and used these words, used the
8 words "Jerry, have you heard about Ray's new deal, Training
9 With the Pros"?

10 A I have no doubt about that, sir.

11 Q You have no doubt about that?

12 A No, sir.

13 Q And Jerry said, "No, I haven't heard about it."
14 No doubt about that?

15 A No doubt about it.

16 Q That is exactly the way it happened?

17 A Maybe not exactly, but in the substance.

18 Q You remember it, your mind says to you that is
19 exactly the way it happened, right? Well, at any rate,
20 there is no question it was Pfingst who by prearrangement
21 with you opened the subject to the boys?

22 A Yes, sir.

23 Q Now, you remember testifying before the grand
24 jury on November 19, 1973? Do you remember that?

25 MR. GOULD: Page EJC4, Mr. Sorkin.

1 gab-2

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2 MR. SORKIN: Thank you, Mr. Gould.

3 A Do you really want me to answer do I remember that?

4 Q Yes, I really want you to tell me whether you
5 remember it or not.

6 A I don't remember testifying at the grand jury
7 on a certain date that you quote. If you say I have testified,
8 yes, I have.

9 Q You do --

10 A I don't remember a particular day. From the --
11 I have been in front of the grand jury dozens of times.

12 Q You remember sitting under trees at the Baur au Lac
13 with Pfingst and Stoller and Allen?

14 A Yes, but I have had many grand jury appearances.
15 They didn't make me a million dollars, that did.

16 Q That is why you remember that?

17 A Yes.

18 Q It stuck in your mind and there was never any
19 doubt about what was said in that conversation?

20 A Never any doubt about the whole conspiracy.

21 Q There never was any doubt in your mind about that
22 conversation under the trees at the Baur au Lac that you
23 described --

24 A In substance, you are correct, sir.

25 Q That was an important thing in your life?

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A Not then. We didn't make the million dollars.

It was just a start.

Q How about in November '73, was it important then?

A Was it important to me?

Q Yes.

A It was important in a purpose of cooperating with the Government.

Q "Q Now, am I correct that there came a time that you told Mr. Stoller about a company called Training With the Pros"? The question put to you by Mr. Sorkin. You are there, you are under oath and you give the following response.

A Yes, I believe myself and another individual, but I cannot be perfect as to who told him."

Did you give that answer to that question?

A Yes, sir, I also modified --

Q Just answer the question. If Mr. Sorkin wants any more from you, he will ask for it.

A Thank you, sir.

Q You gave that answer?

A Yes, sir.

Q And that is the same conversation that you just told us about when Mr. Pfingst said to Mr. Stoller, "Have you heard about Ray's new deal," and so on?

1 gab-4

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2 A That is the other gentleman and expanded.

3 Q I see. When you testified on November 19,
4 1973 --

5 MR. GOULD: Conceded, Mr. Sorkin?

6 MR. SORKIN: That is correct. I concede it.

7 Q When you testified under oath and you were asked
8 about that conversation, you were asked:

9 "Q Am I correct that there came a time when you told
10 Mr. Stoller about a company called Training With the Pros"?
11 You said "Yes, I believe myself and another individual, but
12 I cannot be perfect as to who told me."

13 That is the answer.

14 You didn't even remember it, did you, that it was
15 Mr. Pfingst who told you?

16 A I said another individual. I did not remember at
17 the time.

18 Q You did not remember it was Mr. Pfingst?

19 A I remembered it was Mr. Pfingst. I didn't remember
20 which of the two.

21 Q When you testified before the grand jury on
22 November 19, did you say one word about Mr. Pfingst being at
23 the meeting?

24 A I think if Mr. Sorkin would have asked me to
25 express my mind and to think who was the other gentleman, I

1 gab-5

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2 would have said, I am quite sure -- I am pretty sure, but
3 I am not doubly sure it was Mr. Pfingst. He didn't ask me
4 that.

5 Q And you couldn't remember who it was at that time?

6 A No, I only -- the question and answer theory,
7 like with you and I. I am not allowed to intercede.

8 Q You never mentioned Pfingst, did you? That is
9 all --

10 A If he said would you search your mind, Mr.
11 D'Onofrio, and think a little further, I would have recalled
12 at that point.

13 Q It was Mr. Sorkin's fault that you didn't remember
14 Pfingst?

15 A Maybe it was by design, not by fault.

16 Q Now, sir, you said in your testimony in this
17 case, Page 154 of the transcript, you said that you partici-
18 pated in the drafting of a certain indication letter in
19 August of 1968.

20 Do you remember that?

21 A Yes, sir.

22 Q Do you want me to read the questions and answers?

23 A Yes, I remember it.

24 Q All right. I will refresh your recollection a
25 little.

1 gab-6

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2 "Q Where did you first see it? " "It" being the
3 draft of the indication letter?

4 "A I was present at the drafting of it on a yellow
5 tablet, piece of paper, in August of 1968 when Joseph Pfingst
6 and I were in Switzerland, and Joe writes the letter" --
7 it says here.

8 "Q You participated in the drafting of it in August
9 of 1968?

10 "A Yes."

11 Do you remember giving those answers to those
12 questions?

13 A Yes, sir.

14 Q Was it true? Was your testimony truthful at
15 that time?

16 A Yes, sir.

17 Q When you testified to that, did you actually have
18 in mind a mental image of the paper being drafted on a
19 yellow sheet, Mr. Pfingst drafting it --

20 A A mental image?

21 Q Yes.

22 A We generally always use yellow sheets. So it is
23 possible it could hve been graph paper. It probably could
24 have been the graph paper or a yellow sheet of paper that
25 the transcribing was done on. I think I probably said

1 gab-7

D'Onofrio-cross

2 yellow sheet, because yellow is used 99 per cent of the time
3 and the Swiss bank's paper, two or three percent of the time.

4 Q You really didn't have any recollection --

5 A That it was yellow.

6 Q Let me finish, Mr. Witness.

7 You didn't really have any recollection whether
8 it was a yellow sheet or the bank's draft paper?

9 A Not draft, they use graph scrap paper.

10 Q So when you said yellow sheet, that was a recon-
11 struction by you of what you thought?

12 A What was my best recollection.

13 Q How about who wrote it out, whether it was Pfingst
14 or somebody else?

15 A That I recall, Mr. Pfingst.

16 Q That you are sure of?

17 A He is a lawyer.

18 Q Do you remember him doing it or is that to a re-
19 construction?

20 A That I remember.

21 Q You are going to sit here now and look back the
22 way you did the other day and say Pfingst wrote it out?

23 A In longhand.

24 Q In longhand, I am not sure it was yellow, but
25 I think it was yellow?

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A And he was using -- may I add further or do you want me to end?

Q Go on. You add anything you want.

A Well, he was using a boilerplate of a letter that we had used for another manipulation as his guide.

Do you understand what I meant by that?

Q I heard you, but I don't understand it, no.

A He was using a boilerplate. You are a lawyer. You know what a boiler plate is.

Q I?

A Yes.

Q I know what it means to me. You go ahead, finish your answer.

A He was using a boilerplate of another letter that we were currently using in another manipulation as his guide for drawing this letter.

Q Do you have the other letter?

A I think the United States Government has it.

Q Have you ever seen the indication letter, the Bank Hofmann indication letter, Government Exhibit 4, is it?

A The one in Training With the Pros, or the one you are asking me --

Q Training With the Pros.

A I am sorry. We got into another subject.

gabQ9

D'Onofrio-cross

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Q No, we didn't, I am on the same subject. You got into another subject.

A Yes, I have seen it.

Q You have seen it? You saw it here, didn't you, this paper?

A Yes.

Q Now, before you saw it here had you ever seen it before except in Zurich when it was written?

A Sir, typed in Zurich -- first I saw it written.

Q Yes.

A Then I saw it typed on around October 12, 13 or 14.

Q Yes.

A Then I saw it again at Mr. Moss' office, but I brought a photocopy of it back in my own courier case. So I had a copy in the event Mr. Moss's went astray, that the bank sent to him.

Then I saw it again when I gave photocopies of it to Mr. Stoller and Mr. Allen. Then I saw it again when we produced those copies at Marty Frank's office in November. Then I never saw it again because it was destroyed, I was told, until this trial when the Government asked me have I ever seen that document.

Q All right. We are very clear then. You saw it

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D'Onofrio-cross

in Zurich and then you saw it several times after that, right?

A In the United States.

Q In the United States?

A Yes.

Q Several times?

A Yes, sir.

Q And then you saw it again in this courtroom?

A Yes, sir.

Q Correct?

A Yes, sir.

End 2A

1 2b pm gwrf 1 D'Onofrio-cross

2 O Now, going back to your grand jury testimony in
3 November 1973, page RSK 2, question by Mr. Sorkin. This
4 is on November 19, 1973.

5 Before I ask you the question, you had seen it
6 in the States prior to November 1973, hadn't you?

7 A Years prior.

8 O When you saw it in Zurich, that was in the year --
9 what year?

10 A 1969.

11 O And then when you saw it at Frank's office what
12 year was that?

13 A Excuse me. 1968 I saw it in Zurich.

14 O All right.

15 A 1969 again in Frank's office.

16 O Then you saw it with Moss --

17 A No, that was the same time.

18 O The same time?

19 A Yes. I hadn't seen it since 1969.

20 O You saw it six or seven times, right?

21 A Four or five times.

22 O Four or five times, all right.

23 Now I'm all straightened out.

24 When you testified on November 19th you
25 were asked this question and I think you gave this answer:

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2 "Q Am I correct that at some point in October, Sept-
3 ember or October or even possibly earlier it was agreed
4 based upon previous experience with another security
5 called Resource Control, Inc. to have the bank send a
6 letter of indication to Training With The Pros indicating
7 that they had heard there was going to be an underwriting
8 and they would be interested in acquiring such stock in
9 the underwriting?"

10 We are clear, aren't we, the letter you are
11 talking about is Exhibit 4, right, the indication letter?

12 A Yes, sir.

13 Q No question about it? And you answered:

14 "A Yes, I believe it was earlier than October or
15 September, but I can't place the date. I've never seen
16 the documents since."

17 So you were telling them then that you hadn't
18 seen this letter?

19 A That was my best recollection at that time.

20 Q Then?

21 A Yes, sir..

22 Q This was November of '73. Then something happened
23 between November '73 and the day when you testified
24 differently in this courtroom the other day, as I have just
25 read you, something happened to remind you that you had

2 seen the documents in Marty Frank's office?

3 A Is that a question, sir?

4 Q Yes, sir, that is a question.

5 A What is the question?

6 Q Did something happen?

7 A Yes, sir.

8 Q What happened?

9 A I studied the case in my mind intimately. I
10 studied the conspiracy, I studied the crime in my mind over
11 and over, weekend after weekend, day after day.

12 Q Alone?

13 A Alone, in solace, in solitude.

14 Q Just you in solitude thinking about this case?

15 A And then occasionally reporting to Mr. Sorkin.

16 Q I see.

17 In the course of that meditation it occurred to
18 you that you had seen the letter again and that your
19 testimony under oath before the grand jury in November
20 1973 was inaccurate?

21 A Yes, sir.

22 Q And so you went to Mr. Sorkin, did you not,
23 and you said, "I'm sorry, I gave wrong testimony before
24 the grand jury."

25 A No, sir, because I either preambled that testimony
or ended that grand jury testimony with the fact that I

1 gwrf 4 D'Onofrio-cross 801
2 could elaborate, change, alter, modify, correct, amplify
3 any statement that I made because I'm doing it under
4 conditions that I'm not really ready for, if I'm shown
5 documents or things to the other. At least that is what I
6 remember doing at most of my grand jury appearances.

7 Q You remember in that same grand jury testimony
8 when you inadvertently gave the wrong answer to that
9 question and told the grand jurors that you had never
10 seen the document before -- do you remember Mr.
11 Sorkin explaining to you what the penalty was for false
12 testimony?

13 A Yes, but that isn't false testimony if you don't
14 recall.

15 Q I see.

16 A Deliberate perjury is.

17 Q And then you said in November 1973 that, "The
18 events relating to Training With The Pros are four or five
19 years old and I've had very little or practically no
20 material or evidence or paperwork and the statements
21 I'm about to give are from full recollection and memory
22 and may be subject to amplification, correction, modifica-
23 tion or altering in any way, shape or form in the future
24 if I'm shown documents to the contrary, if I'm shown
25 documents to the contrary, that may lead me to believe

2 that I made errors in my recollection today."

3 That was the out you gave yourself, right?

4 A An out?

5 Q Isn't that an out?

6 A That is not an out, that is being truthful. I
7 couldn't honestly testify to the whole crime without ever
8 thinking about it.

9 Q Under oath before a grand jury --

10 A It is not an out.

11 Q That is not an out?

12 A No.

13 Q Well, what I call the out is your saying --

14 A You call it an out. I call it being truthful.

15 Q You call it that.

16 "If I'm shown documents to the contrary that may
17 lead me to believe that I made errors in my recollection
18 today."

19 Those are your words, aren't they?

20 A You call it out, I call it truthfulness.

21 Q Those are your words?

22 A They are my words.

23 Q "I may want to change this if I'm shown documents
24 to the contrary that may lead me to believe that if I
25 made errors in my recollection today," isn't that
what you said?

2 A Yes.

3 Q That is what came out of your mouth?

4 A Absolutely.

5 Q Were you shown any document to establish that
6 you had seen that indication letter, Government's Exhibit 12

7 MR. SORKIN: At what time?

8 Q Any time between November 19, 1973 and the date
9 you came into this courtroom and testified.

10 A Yes, sir.

11 Q What was it?

12 A I saw the document.

13 Q What document?

14 A The one you are referring to.

15 Q You saw that document at the grand jury, didn't
16 you?

17 A You mean thereafter?

18 Q After that did you see a document that makes
19 you change your mind about what you testified to?

20 A No, I recalled.

21 Q It came out of your head?

22 A Yes.

23 Q So that when you said to the grand jury on November
24 19th, "I may want to change something if I'm shown documents,"
25 let me read it to you just the way you said it.

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2 MR. SORKIN: I think he has read it to him already,
3 your Honor. I don't see any need in going over it again.

4 THE COURT: I don't know what counsel is going to
5 read so I can't answer that.

6 MR. SORKIN: I'm sorry, your Honor.

7 Q When you said to the grand jury that "And may be
8 subject to amplification, correction, modification or
9 altering in any way, shape or form in the future if I'm shown
10 documents to the contrary that may lead me to believe that
11 I made errors in my recollection today," and that is what
12 you said?

13 A Documents. Notice the plural.

14 Q The plural?

15 A The plural is important.

16 Q What is important about the plural?

17 A Because when I see transfer sheets, when I see
18 my own written handwriting, when I see my distribution,
19 documents make you recall and go back.

20 Q That is what I want to know, sir. What documents
21 did you see?

22 A Many. I had my own. Then I had my own analysis
23 of my distribution of the stock, I had various documents.
24 I had the offering circular to work with longer, I had
25 reflections on those documents, I saw the transfer sheets,

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I saw the various transfers into street names and,
as you can see all these documents it becomes more vivid.

Q Then you remembered that you had seen Government's
Exhibit 4 in Marty Frank's office, after you saw those
documents, right?

A After I recalled the whole series of the
crime.

Q Those --

A During the time.

Q It came out of your head, not out of documents?

A It came as a result of documents refreshing
my memory.

Q Okay.

A Why are you being a witness for me?

Q Isn't it a fact, sir, that every time you testified
before the grand jury in this case -- do you remember all
those dates I gave you -- you always said that what
you were telling them was subject to being changed later
on?

A Yes, I believe it may be true, but I may have missed
it once.

Q But generally your practice was to say, I'm
under oath, I'm telling you what I remember, but I may
want to change it later on? ...

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A Yes, I had a good reason.

Q I know. Do you want to tell me what the reason was or do you want me to tell you?

A I would rather tell you.

Q Tell me.

A My reason was, during the course -- through November I was insured by many United States Attorneys, the Federal Bureau of Investigation, the United States Postal Authorities, state agencies, for crimes in other areas that I had not worked or had any recollection of the things that Mr. Sorkin, who was just then assigned to me to handle these cases -- and I wanted to give myself time to think about them. I had too many other things on my mind relative to many other crimes and I was not concentrating on the areas he was talking to me about.

Q Did you ever ask to delay your appearances before the grand jury because you weren't ready?

A No, but I did ask Mr. Sorkin -- I says, "Mr. Sorkin, are you the type of an attorney that goes through a very deep grand jury testimony or are you the type of an attorney that is very brief and doesn't make it lengthy? Because if you are the type of an attorney that goes extremely lengthy, 30 or 40 pages, you better give me a lot of time for preparation otherwise" --

2 he says, "I'm very brief, Ray. I conduct my interrogation.
3 briefly."

4 I says, "Then I have to give myself the right to
5 correct and amplify."

6 Q Do you remember the question I asked just now?

7 A Yes, sir.

8 Q What was the question?

9 A You asked me what was my reason for using the
10 correction and amplification.

11 Q That is what I asked you?

12 A That is what I thought.

13 MR. GOULD: Would the reporter please read the
14 question?

15 (Question read.)

16 Q Did you hear it now?

17 A Yes, sir.

18 Q Has that got anything to do with what you just
19 told me about your --

20 A Yes, that has a great deal to do with it. I
21 told --

22 Q Now you heard the question.

23 Would you be good enough to answer my question?

24 Did you ever ask Mr. Sorkin or anybody else connected with
25 the United States Attorney's office to delay your appearance?

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before the grand jury because you were not ready, you had not had a chance to prepare yourself?

A Not in those words, sir.

Q In anything like that?

A The words I just gave you.

Q What words?

A Saying that if you are going to be extremely lengthy and want the whole thing out at one time, I am not prepared.

Q You know what it means to testify before a grand jury, don't you?

A Yes, sir.

Q You know that you go in there to accuse other human beings of crimes?

MR. SORKIN: Objection, your Honor. That is not the purpose of a grand jury, to accuse other --

MR. GOULD: I didn't say that is the purpose of a grand jury, I said that is his purpose.

THE COURT: Whatever you said, I would ask that you put a question.

MR. GOULD: I will rephrase it. I will be far more artistic.

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D'Onofrio-cross

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Q You know, don't you, Mr. D'Onofrio, that when you testify in a grand jury you are a witness in a proceeding which has as its purpose under the law to determine whether or another human being has committed a crime?

A That is correct.

Q And you know that if the grand jury is misled in any way an innocent person may be badly hurt?

A That is correct.

Q Under that. And you know that to go into a grand jury and testify about facts when you are not sure is a pretty dangerous thing to do to other people?

A That is correct, sir.

Q And so you went into this grand jury four or five times up to November 1973 knowing that you had not done your studying and you testified and gave answers to questions?

MR. SORKIN: Your Honor, I object. There is no record that he went in four or five times.

MR. GOULD: How many times was it?

MR. SORKIN: Before November. It is four or five after, but only once before.

Q Twice you went before a grand jury, once --

A Once in a rush with Mr. Brodsky, I believe --

Q Well, that doesn't count.

A Sure it counts.

2 Q You went in there, you were not ready, prepared,
3 you made mistakes --

4 A If the Government wants to bring me in and I tell
5 them I am not ready for full testimony, who knows, they may
6 have thought I would drop dead tomorrow from a clot in my
7 aorta and wanted as much information out of me as they
8 could get.

9 Q In a grand jury?

10 A I am not a healthy man and they probably wanted
11 as much as they could get.

12 Q You have heart trouble?

13 A Yes. I have a blockage of my main aorta. I
14 am not looking for sympathy, I am just telling you the
15 facts.

16 Q You have my sympathy. I was just astonished to
17 learn you have heart trouble.

18 You were not ready and you went in anyway?
19 That is what it comes down to.

20 A If the Government tells you to go into a grand
21 jury I cannot tell them I am not going in.

22 Q You could say, "I am not sure of my facts" --

23 A I did, I modified it by putting that quotation
24 in there. I did exactly what you told me I should have
25 done, and I put it on the record. I didn't say it

2 before we went in.

3 Q Let's go back, page 141 of the transcript, in
4 this case-- we are talking about this here case, page 141.
5 Do you remember testifying here the other day that when
6 Pfingst -- now, the four of you are sitting under the big
7 awning outside the Baur au Lac, big tree, huge tree,
8 terrace in front of the Baur au Lac --

9 A I wanted to hear you say it. it sounds so
10 beautiful.

11 Q A big tree, an awning, you look out over the lake,
12 you remember that?

13 A Yes, sir.

14 Q And the four of you are sitting there and you
15 and Pfingst and Stoller and Allen and Pfingst is playing
16 Heckle & Jeckle with you, remember, or with them, and
17 they start to talk about Training With The Pros, right?
18 That is the conversation?

19 A Yes, sir.

20 Q The first time that Mr. Stoller ever hears, as
21 far as you know, about Training With The Pros?

22 A I may have previously when he asked what deals --
23 I always used to throw deals on their desks, but never
24 discussed them. "What are you doing lately?"

25 "I'm doing Bio Derivatives" --

2 Q So far as you know, that is the first time
3 Stoller hears about Training With The Pros, and by pre-
4 arrangement with Pfingst, Pfingst is the one who tells
5 him about it?

6 A Yes.

7 Q Also, you told us the other day, Stoller wasn't
8 very interested, was he?

9 A No, sir.

10 Q In fact, he said to you, "I don't want to hear
11 about any new deals. I have no interest in new deals at
12 all," correct?

13 A Yes, sir.

14 Q Those are the words? You remember the words?

15 A Yes, sir.

16 Q Then Jerry Allen says, "Phil, let him speak his
17 piece, let him finish, maybe they have something we can
18 look at," that is what you told us the other day.

19 A Yes, sir.

20 Q Stoller was very unenthusiastic when it was first
21 mentioned?

22 A What is your question?

23 Q When the subject was broached by Pfingst, Stoller
24 said, "I don't want to hear about any new deals," and he was
25 unenthusiastic?

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A No question about that, sir.

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Q No question.

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Okay.

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Let's go back to your grand jury testimony on January 10, 1974. By January 10th you were better prepared than you had been on November 19, 1973?

8

A Not much better, no, sir.

9

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Q You were still fuzzy, still had not done your homework?

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A No, sir. I was working on many, many other cases. In fact, they shot me down to Tallahassee when --

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Q They shot you?

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A I mean I was sent to Tallahassee on some state crimes down there and I was supposed to be up here working on Training and the whole case came in between and Mr. Sorkin was on a long trial and I was unable to see him for a few weeks. So I would have to say at that time I was just about as well prepared as I was the previous time.

20

Q Which was not very well prepared?

21

A Not very well prepared.

22

23

Q I'm reading from GH 4 of the grand jury minutes of January 10, 1974:

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"Q And did Joe Pfingst present the Training With The Pros deal in your presence?"

Mr. Sorkin asked you that question.

"A That is correct.

"Q Am I correct that Mr. Stoller and Mr. Allen jumped at the deal and were very enthusiastic to go into it with you and Mr. Pfingst?

"A Extremely enthusiastic, yes."

A Yes.

Q That is the truth?

A That is the truth, and so is the other question the truth.

Q It is true that --

A One is a final result and one is an initial part.

Q The final result was they jumped at the deal and were extremely enthusiastic?

A But at the beginning Phil was not enthusiastic.

Q You were just giving the final result here?

A I was only answering the question.

Q When you said to me before that Stoller was very unenthusiastic --

A At the beginning, yes, sir.

Q It was my fault because I didn't say he was unenthusiastic at the beginning?

A And then enthusiastic at the end.

2 Q That is what I should have asked you?

3 A So I could give a proper answer.

4 THE COURT: We will take the afternoon recess
5 at this point, ladies and gentlemen of the jury, ten
6 minutes. Counsel please remain.

7 Would you remain, Mr. D'Onofrio?

8 THE WITNESS: Yes, sir.

9 (Jury leaves room.)

10 THE COURT: Gentlemen, the clerk is not here,
11 but I have gone through this portfolio of documents
12 which Mr. Sorkin produced with the help of his aids
13 post-luncheon. This is the folio which as soon as the
14 clerk gets to it should be marked Court's Exhibit 2 for
15 identification. I have extracted a number of documents,
16 some of which I need the help of Mr. D'Onofrio on.

17 Mr. D'Onofrio, I show you an exhibit, July 10,
18 1973, SDNY Grand Jury, Exhibit No. 4 something. Is that
19 in your handwriting?

20 THE WITNESS: That is my handwriting, yes.

21 THE COURT: I show you another document which
22 is a letter addressed to Mr. Sorkin, which appears to have
23 your signature on it, dated December 3, 1973.

24 Mr. Stoller, if I were you, I would sit down
25 and listen. The Court has not suspended.

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MR. STOLLER: I'm sorry, sir.

THE WITNESS: Oh, yes, I could never get ahold of him so I had to write him a letter.

THE COURT: That's all right. I show you another letter which is on blue stationery and appears to be dated 5-11, perhaps, but some clerk put a hole through it for filing purposes, I guess -- is that in your hand?

THE WITNESS: Yes, sir, this is all in my handwriting. This is May 28, is the post stamp.

THE COURT: I guess it was the 27th, then.

THE WITNESS: About, correct.

THE COURT: Then there is a document which really consists of two, and the face sheet may be in someone else's hand, but the second sheet is in your's, I believe.

THE WITNESS: The first sheet. I don't know the handwriting.

MR. SORKIN: I think that is Mr. Doona, your Honor.

THE WITNESS: This is all my writing.

(Indicating.)

THE COURT: Thank you. You may be excused.

THE WITNESS: Thank you, your Honor.

(Witness leaves courtroom.)

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THE COURT: Gentlemen, I am going to turn over to the defense the following and you may not choose to use any part of it and indeed I might say, although the judgment is yours, of course, I would be rather surprised if you would, but that is something I leave up to you.

First is a document which has already been marked Exhibit No. 4 something before our grand jury on July 10, 1973. That will be called Court's Exhibit 2-A, and I will put it on in my own hand, gentlemen, in case you forget and start badgering somebody else. It will be my writing.

Mr. Feldshuh, would you aid the Court by being a conduit and pass these documents.

MR. FELDSHUH: Yes, your Honor.

THE COURT: The next is a letter, as you heard, in the hand of Ramon D'Onofrio, dated December 3, 1973, to Mr. Sorkin. This will be Court Exhibit 2B for identification.

The next is the letter which we believe may be May 27, 1974, addressed to Ira Sorkin, and it will be marked Court Exhibit 2C for identification.

The next, consisting of two pages, only one of which is in the handwriting of Mr. D'Onofrio --

MR. SORKIN: May we have the top one back, your Honor? It is our guide as to what the document is.

THE COURT: Court Exhibit 2D is an undated list headed "Fred," and then the sum of \$365 and there is an entry, "You owe me 5000 shares, TWP", which I believe, thanks to your eloquence in this trial, must mean Training With the Pros.

I come now to a transcript which on its face has nothing directly to do with our case at all which is Court Exhibit 2E for identification, and that is the SEC transcript, Pages 1 to 73, dealing with, I assume, an issue, Fast Food Services, Inc., and I have taken the liberty of putting some tabs on some pages which have some reference to names which have been mentioned on direct and cross-examination of the witness D'Onofrio.

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Also a lot of material in this case which doesn't have anything to do with the direct, I admit that, but I do think from what I have heard, counsel should fairly have this. For example, we have a reference to a person named Recca, a name we have heard about. We have a reference here to Herbert and the firm of Herbert & D'Onofrio, A.G. and some answers which you gentlemen might deem to be slightly inconsistent with what was given here.

I am frank to say, Mr. Sorkin, I won't impose great restrictions if the counsel want to read other pages in here. I better warn you of that. I would not permit them to get into some of the esoterica which is contained in here about some of the other things this witness was up to in his days with A.T.Brod and others.

I don't think that is fair and I don't think it is necessary here but I don't want to restrict the rummaging of counsel into this document because there are a few things they may want to see.

As soon as the clerk reappears from his duties outside here, we will have these formally marked.

MR. SORKIN: Mr. Doonan pulled out pamphlets from the file entitled "Sensory Systems Presents Training With the Pros, Automotive tuneup," and they are just pictures and publications and I don't care whether counsel look at

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D'Onofrio-cross

2 it or not.

3 MR. GOULD: A point of view devoutly shared by
4 counsel.

5 I have no interest in them.

6 THE COURT: I do feel counsel should see these
7 other documents.

8 MR. FELDSHUH: Thank you, your Honor.

9 THE COURT: Perhaps that is not under Rule 3500
10 strictly or exclusively, but I think they should see them.
11 I think the Government is correct in their view that the
12 rest of this folder, Court Exhibit 2 is not producible.

13 Off the record.

14 (Discussion off the record.)

15 (Court Exhibits 2A through 2E were marked
16 for identification.)

17 (Recess.)

18 (In open court; jury present.)

19 THE COURT: Before we begin, Mr. Gould, have you
20 had a chance to examine those documents which I explicated
21 on the record?

22 MR. GOULD: They are looking at them, your Honor.

23 THE COURT: You are willing to go ahead?

24 MR. GOULD: Yes, your Honor. They are going over
25 them and I am sure before very long we will have a con-

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D'Onofrio-cross

2 clusion.

3 THE COURT: All right.

4 BY MR. GOULD:

5 Q Mr. Witness, do you remember testifying in this
6 case the other day, Page 159 of the transcript:

7 "Q Tell us, please, what Mr. Frank said, if anything,
8 with reference to this letter?"

9 Now "this letter" is that same Exhibit 4, the
10 indication letter we were talking about before?

11 A Yes, sir.

12 Q That is what you were talking about at that
13 moment?

14 A Yes.

15 Q You better keep that letter in front of you so
16 you know that is the letter we are talking about. (Handing.)

17 You were asked by Mr. Sorkin:

18 "Q Tell us, please, what Mr. Frank said, if anything,
19 with reference to this letter."

20 "A Mr. Frank told me that he had succeeded in getting
21 the corporate books back from Miss Hertzfeld and one of the
22 things that was most damaging to all of us was this letter
23 and that he had seen to it that it was destroyed."

24 A Yes, sir.

25 Q That was your answer?

1 rmb-5

D'Onofrio-cross

2 A Yes, sir.

3 Q In other words, he didn't tell you to destroy
4 it, he said it had been destroyed?

5 A That he had destroyed it.

6 Q You didn't hear him tell anybody to destroy it,
7 simply that he had destroyed it?

8 A Yes, sir.

9 Q In the grand jury, January 10, 1974, were you asked
10 this question by Mr. Sorkin and did you give this answer --

11 A What date, sir?

12 Q January 10, 1974.

13 A Yes, sir.

14 MR. SORKIN: Page number?

15 MR. GOULD: GH4.

16 "Q Am I correct, Mr.D'Onofrio, that there came a point
17 in time when Mr.Frank, to your recollection, told you to
18 destroy the original of the letter that was received from
19 Bank Hofmann," -- that exhibit. Do you remember that question?

20 A I don't remember that question, ~~no~~, sir.

21 "A He told myself, Mr.Stoller and Mr. Allen to make
22 sure the document was destroyed."

23 Did you give that answer to that question?

24 A If I did, yes, sir.

25 MR. SORKIN: Mr.Gould, I am sorry, I can't find

rmb-6

D'Onofrio-cross

1 it. Is it GH4?

2 MR. COULD: There it is (indicating).

3 A That is true, he told us to destroy it at one
4 time, and at another time he told me he had destroyed it
5 when he got it from Miss Hertzfeld.
6

7 Q He told you both?

8 A Yes.

9 Q First he told you to destroy it and then he told
10 you he had gotten it back and had destroyed it?

11 A Yes, sir.

12 Q Mr.D'Onofrio, have you ever told that to anybody
13 else before, that there were two conversations with Martin
14 Frank in one of which he told you to destroy it and in
15 the other of which he told you he had destroyed it?

16 A No, sir, I don't think so.

17 Q The first time you ever mentioned that was right
18 here right now after you had heard what you said in the
19 grand jury, isn't that right?

20 A I believe so, yes, sir.

21 Q There isn't a word anywhere else about two con-
22 versations with Frank about destroying the letter?

23 A There are an awful lot of conversations that are
24 omitted from my testimony here and there are an awful lot
25 that have not been submitted because I just didn't remember

1 at the time of direct.

2
3 Q And you just remembered for the first time since
4 1969 --

5 A That's correct, you are helping me recall.

6 Q -- that there were two conversations?

7 A And the more you help me to recall, the more
8 comfortable I am.

9 Q You are now comfortable with the fact that when
10 you were asked in this case what the conversation was, you
11 said, "Mr. Frank told me that he had succeeded in getting the
12 books back from Hertzfeld and that one of the things that
13 was most damaging to all of us was this letter and that he
14 had seen to it that it was destroyed."

15 A Yes, sir.

16 Q He said that after you had had a different con-
17 versation which you have never testified to except here in
18 the grand jury -- do you want to change it now?

19 A No. I want to tell you when the other conversa-
20 tion was.

21 Q Tell me when, where and who was present.

22 A It took place in the late April conversation
23 when he told us that I would have to get the company to repre-
24 sent him and he said, "You better get that letter back
25 and we are going to have to have it destroyed."

1 rmb-8

D'Onofrio-cross

2 Q When was the conversation when he told you he had
3 destroyed it?

4 A The beginning of July or the end of June -- more
5 near July or the middle of July.

6 Q We now have it there were two conversations and you
7 and I are in agreement that never before have you told about
8 the two conversations?

9 A You have helped more of the truth come out.

10 Q I am delighted. The first one is in April and
11 in April Frank says, "You better get hold of that letter and
12 destroy it," or words to that effect?

13 A In substance, yes.

14 Q But you don't go and get the letter, do you?

15 A Oh, I couldn't. I tried.

16 Q Why not?

17 A Miss Hertzfeld's brother was a lawyer and Mr. Moss
18 said, "We have nothing to hide at all," and Miss Hertzfeld
19 said, "Under advice of my brother, we are not going to take
20 any other attorney. We did nothing and if those two
21 comedians," meaning Stoller and Allen, "played around with
22 our stock, we have nothing to hide and we are going in to the
23 grand jury and say anything we want."

24 Q You are telling us between April, when Mr. Frank
25 told you to get the letter destroyed, and July, when Mr.

1 rmb-9

D'Onofrio-cross

2 Frank told you in a different conversation that he had gotten
3 the letter and destroyed it, you made an effort to get hold
4 of the letter to destroy it?

5 A I made an effort to have the firm of Feldshuh
6 & Frank hired so that it could be destroyed, that he would
7 have hold of the books.

8 Q Didn't you go to Miss Hertzfeld and say, "Give
9 me that letter, I need it"?

10 A No, sid, I said, "Hire the firm."

11 Q What firm?

12 A Feldshuh & Frank.

13 Q In other words, Mr. Frank told you to get hold of
14 that letter and destroy it?

15 A To get all the corporate books and that letter.

16 End 3B
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gab-1

D'Onofrio-cross

Q I have to read your testimony. You testified, you said in the grand jury, you said Mr. Frank, to your recollection -- really Sorkin said. Let me read it exactly.

"Am I correct, Mr. D'Onofrio, that there came a point in time when Mr. Frank, to your recollection, told you to destroy the original of the letter that was received from Bank Hofmann?"

"A He told myself, Mr. Stoller and Mr. Allen to make sure the document was destroyed."

Now, that is what you testified to?

A Yes, sir.

Q And that is the truth when you told it?

A Yes, sir.

Q And that was back in April?

A Yes, sir.

Q And you didn't do anything yourself between April and July to get the letter destroyed, did you?

A I couldn't get it.

Q Did you try?

A I couldn't get the books, I couldn't get them appointed as counsel.

Q Did you try to get the letter?

A No, sir.

1 gab-2

D'Onofrio-cross

2 Q So I am right, you didn't do a darn thing to
3 get the letter and destroy it?

4 A I tried to get them appointed as counsel so they
5 could have custody of the books and records.

6 Q The answer is you didn't do anything to get the
7 letter?

8 A That is not the answer, sir.

9 Q You just told me that.

10 A I did not tell you that. I said I tried to
11 employ the firm because Marty Frank told us if the law firm
12 has custody of all books and records of the company, they
13 will not be able to get them from him during the course of
14 the trial, that the SEC would be coming up in.

15 Q Have you ever told that to anybody before?

16 A Yes, I think I told that to Mr. Sorkin, but
17 I didn't testify here to that.

18 Q You never --

19 A There are many things that I probably haven't told
20 you. If you would like to go into this theme --

21 Q Now they are coming out. You and I --

22 A We have a good rapport.

23 Q Terrific.

24 The fact is that other than trying to get the
25 firm of Feldshuh & Frank appointed as counsel for the company.

gab-3

D'Onofrio-cross

1 you didn't do anything?

2 A You mean try to get the actual letter?

3 Q That's right.

4 A No, that's all inclusive. It is all books, records,
5 documents from the underwriting, everything.

6 Q Frank didn't tell you to destroy all the documents,
7 he just said to get the letter and destroy it, isn't that
8 right?

9 A Yes, sir. But I thought it was prudent that I just
10 get him appointed as counsel.

11 Q That was your idea?

12 A Yes, sir.

13 Q And --

14 A No, it was his idea to be appointed as counsel.

15 Q I am only using your words, Mr. Witness. Frank
16 told me -- you said Mr. Frank, to your recollection, told you
17 to destroy the original of the letter that was received
18 from Bank Hofmann.

19 A He told myself and Mr. Stoller and Mr. Allen to
20 make sure the document was destroyed."

21 That is your testimony, isn't it?

22 A That is correct.

23 Q Did he tell you that or did he tell you something
24 different?
25

1 gab-4

D'Onofrio-cross

2 A He told me that, sir.

3 Q He didn't tell you to destroy all the books, did
4 he?

5 A Of course not.

6 Q Just that letter, and other than your efforts
7 which you have described a little to get the firm of Feldshuh
8 & Frank as counsel, you didn't do anything?

9 A Frank gave me a lot of advice I didn't follow.
10 This is one of the pieces I didn't follow.

11 Q Can't you and I agree in this quest for the truth
12 that you didn't really do anything to get the letter and
13 destroy it?

14 A I didn't try to do that, no, sir.

15 Q So the advice he gave you fell on deaf ears, you
16 didn't --

17 A That's absolutely correct.

18 Q Then in another conversation in July you say,
19 right -- in July you had another meeting with Frank and that
20 was really a conversation that you were testifying to the
21 other day when Mr. Frank told you that he had succeeded in
22 getting the corporate books back from Miss Hertzfeld,
23 and one of the things that was most damaging to all of us
24 was this letter, Government Exhibit 4, and it was destroyed?

25 A Yes, sir.

gab-5

D'Onofrio-cross

Q And we are in agreement that this is the first time it has come out in all of this case that there were two conversations about destroying the letter?

A That there were two conversations, yes, sir.

Q And you never told that to Sorkin?

A I don't recall, sir.

Q You --

A I would have to agree with you, I don't recall.

Q You would have to agree with me that you never said that before.

MR. GOULD: I will ask Mr. Sorkin, am I not right, this is the first time --

MR. SORKIN: Your Honor, does the Court --

MR. GOULD: If he doesn't want to answer, that's all right.

MR. SORKIN: I will answer, Mr. Gould.

THE COURT: Just a moment. Nobody is requiring you with my approval at least to answer anything.

A I don't --

THE COURT: Just a moment. Please go on.

MR. GOULD: I meant by way of a concession. If he won't give it to me --

MR. SORKIN: I will give him as much as he wants, your Honor.

gab-6

D'Onofrio-cross

1 THE COURT: I want you to listen to me, gentlemen.
2 I am a little tired of these reactions because you don't
3 seem to hear.
4

5 If you have any more questions to put to this
6 witness, I would prefer we do that. If you want a concession
7 at a later time from Mr. Sorkin on something, fine. I
8 don't think we should go back and forth here so that --

9 MR. GOULD: I agree, your Honor. I apologize.
10 All I did was to ask counsel if he would concede that this
11 is the first time in the course of the case that two con-
12 versations had been mentioned. If he doesn't want to do it

13 THE COURT: I don't know quite why we have to ask
14 counsel that. You have spent the last five minutes
15 establishing that from this witness. If we want Mr. Sorkin,
16 we can get him later.

17 I want one witness at a time.

18 THE COURT: I accept your Honor's admonition.

19 Q Do you remember your testimony in this case, Mr.
20 Witness, Page 143 of the trial transcript --

21 THE WITNESS: Your Honor, I would like to give
22 this back to them.

23 THE COURT: Do you still wish him to hold onto
24 the copy --

25 MR. GOULD: I am finished with it.

gab-7

D'Onofrio-cross

THE COURT: Very good.

MR. GOULD: Thank you.

Q Page 143 of the transcript. Do you remember testifying that you had originally planned for Training With the Pros to come out at two or \$3 per share? Do you remember that?

A Yes, sir.

Q Do you want me to read it to you?

A No, I remember.

Q And Stoller told you it had to be over \$5? Do you remember that?

A Yes.

Q Is that right, that it was Stoller who told you it ought to be over five?

A I don't remember if it was Stoller or Allen. It could be one or the other. I could be confused on that. Even if I testified here it was Stoller, it could be Allen; one of the two. I am not sure. But those were the reasons given.

Q When was that meeting --

A That was the Baur au Lac meeting with the trees and the sun and the moon.

Q That was what month of the year?

A June 8th or 9th or 10th of 1968.

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Q But certainly June?

A Certainly June.

Q Certainly June in Switzerland.

Now, in your narrative, Stoller Exhibit H, you described the offering, the original offering price of the stock, didn't you?

A I don't recall, sir.

Q Let me read it to you. This is Page 3 of your narrative. You are describing a conversation with a fellow named Richard Kirschbaum.

Do you remember that?

A No, sir.

Q Do you want to look at it?

A No, you can read it.

Q "Richard Kirschbaum, he was a friend of Glenn Wu and I told Richie about the company," the company being Training with the Pros, right?

A Yes, sir.

Q "And I took him up to take a look at the company at 41- 86th Street, which was really not much of a company. It was a two-room apartment and Bud had one apartment which he lived in and worked in with his drawing boards and Marilyn Hertzfeld lived in another apartment next door.

"I told him that I was going to do an underwriting

1 gab-9

D'Onofrio-cross

2 and his mother had an account, I believe, at A. T. Brod,
3 Ida Kirschbaum, and should she have some money to invest,
4 I could use a \$20,000 loan."

5 Do you remember that conversation?

6 A Yes, sir.

7 Q Do you remember writing it in here?

8 A Yes, sir.

9 Q You also remember your testimony that it was
10 Stoller, that you said the stock would be coming out at \$3 and
11 Stoller said it should be \$5?

12 A Yes, sir.

13 Q And then the next sentence, "I would be sure the
14 stock would be coming out at" -- I am sorry. I read it
15 wrong.

16 "I would be sure the stock would be coming at \$5
17 or higher." Did you write that in here?

18 A Yes, sir. Does it tell you the date when I
19 brought Mr. Kirschbaum up there?

20 Q Don't you remember the date?

21 A Yes, I think I brought him up after the Baur au la
22 meeting.

23 Q That is what you think?

24 A I am quite sure.

25 Q In other words, if you said \$5 to Kirschbaum, it

1 gab-10 D'Onofrio-cross

2 was after the Baur au Lac meeting?

3 A Not necessarily. You know, I could have been play-
4 ing him, I could have been doing anything to get money.
5 I'm pretty sure that meeting was much after the Baur au Lac
6 meeting.

7 Q Because until the Baur au Lac meeting you had it in
8 your mind to bring it out at \$3?

9 A Yes, but if I am trying to raise capital, I wouldn't
10 tell somebody that.

11 Q Mr. D'Onofrio, won't you please just answer my
12 question.

13 Am I not right that until Stoller, according to
14 your testimony, at the Baur au Lac meeting said it ought to
15 be \$5, your judgment was it should be \$3?

16 A I didn't say that. It could be 3, 2, 1. I
17 hadn't made up my mind.

18 Q I am referring to your testimony under oath
19 in this case, Page 143 of the transcript in which you are
20 testifying about the Baur au Lac meeting --

21 A Yes, sir.

22 Q -- in June of 1968. This is your testimony. This
23 is your words.

24 "Phil says, 'How much are you coming out with?'
25 I say, 'I am doing a Reg. A offering and I am

gab-11

D'Onofrio-cross

1 thinking of 100,000 shares of stock at \$3 a share or \$2 a
2 share, but certainly it is a low price stock."
3

4 Did you tell us that here the other day?

5 A That is what I just said to you now.

6 Q You never mentioned \$5 to Stoller and then you
7 testified that it was Stoller who said it ought to be \$5?

8 A Over five.

9 Q Over \$5?

10 A Or Allen.

11 Q You said Stoller the other day.

12 A I said it could have been Allen, too.

13 Q It could have been Allen?

14 A Yes, sir.

15 Q Now, sir, I am turning to your narrative and I am
16 describing what you wrote in your narrative in November --

17 A There is no contradiction in that narrative on
18 that subject.

19 Q I am describing what you wrote on Page 3 of
20 your narrative of a conversation that you say in this narra-
21 tive, which you wrote in November 1973 -- right?

22 A Yes, sir.

23 Q That is when you wrote this?

24 A Yes, sir.

25 MR. SORKIN: I think it is November 8, Mr. Gould.

gab-12

D'Onofrio-cross

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Q November 8, 1973, less than a year ago.

You wrote in the paper that you had a conversation with a fellow named Richard Kirschbaum.

A Does it say when? That is the crux of what you are asking me.

Q When is what I want to know.

A My conversation with Richard Kirschbaum took place after the Baur au Lac.

Q Had to be after the Baur au Lac?

A I would assume, yes.

Q All right. Now, sir, in the first sentence of your narrative you say that during the course of your working at A. T. Brod & Company in April, May and June --

A Yes, sir.

Q -- you had the conversation with Kirschbaum.

A Did I say that?

Q You read it.

A It says during -- "Now the main problem that Bud Moss has is money. During the course of my work at A.T. Brod & Company, April, May and June, a research fellow, Richard Kirschbaum used to come in regularly."

Q Go on.

A "He was a friend of Glenn Wu. He came also in regularly July, August, September and October, too."

gab-13

D'Onofrio-cross

Q All right. Is it your testimony that the conversation with Kirschbaum was after you had had the meeting in the Baur au Lac?

A I am not exactly sure, sir.

Q You don't know, do you?

A I cannot actually place it.

Q You didn't know when you wrote this, did you?

A The date?

Q Yes. You didn't know?

A I couldn't remember the date.

Q You didn't know when you testified here the other day whether it was Stoller who fixed the \$5 price or you who fixed it before that, did you?

A Oh, no.

Q You --

A I know it was either Allen or Stoller.

Q You know what?

A I know it was either Allen or Stoller, it was not myself.

Q And you are ready to swear now that the conversation with Kirschbaum was after you came back from Switzerland --

A To the best of my recollection.

Q When did you come back from Switzerland?

A June 8, 9 or 10. I am not sure.

1 gab-14

D'Onofrio-cross

2 Q Do you have a passport that shows you came
3 back --

4 A The Government has my passport.

5 Q And you haven't refreshed your recollection from
6 it?

7 A The reason -- can I answer that, sir? I haven't

8 Q Just yes or no.

9 A I have never been asked to refresh my recollec-
10 tion on that subject.

end 4A 11

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1 4b pm gwrff 1

D'Onofrio-cross

2 Q Good, good. Now we will go to something else.

3 Now, sir, in the transcript here, and I am
4 referring to page 142, you remember some testimony in which
5 you were talking with -- the same conversation at the
6 Baur au Lac -- you were talking about the company and
7 Stoller or Allen -- I can't tell which -- I think it is
8 Allen -- says, "What is the name of the company?"

9 And Joe -- that is Joe Pfingst, right, correct?

10 A Yes.

11 Q Joe says, "M&H Studios."

12 And Allen says, "Oh, my God, what a name. You
13 have to change the name. In a name there is 50 points."

14 A Yes, sir.

15 Q That is what you told us here the other day?

16 A Yes, sir.

17 Q Now, sir, again remember we are at the Baur au Lac,
18 this same lovely setting there. You fellows are sitting
19 there and for the first time they hear the name M&H Studios,
20 right?

21 A Who spoke of it?

22 Q Stoller and Allen.

23 A They may have heard it before.

24 Q Didn't --

25 A They weren't touted on it before. They may have

1 gwrf 2 D'Onofrio-cross

2 heard about it before.

3 Q And Allen says, "My God, what a name, there is
4 50 points in a name, you ought to be able to do better,"
5 right, something like that?

6 A Yes, sir.

7 Q When was that meeting?

8 A June of '68.

9 Q June of '68.

10 Again with your narrative, sir, Stoller Exhibit
11 H, page 4 --

12 A Is that still the narrative that I say it is
13 subject to changing and altering? Is that the same one?

14 Q Anything you said anywhere is subject to change,
15 isn't it?

16 A No, sir.

17 Q Have you ever given the Government a piece of
18 paper where you didn't say it was subject to change?

19 A In the early stages of this -- piece of paper?

20 Q You know, a narrative.

21 A It is the only piece of paper I have given them --

22 Q This says subject to change. We were over that
23 yesterday.

24 A I don't recall, sir.

25 Q All right.

1 gwrf 3 D'Onofrio-cross

2 You see, you distract me. I forget what I'm
3 doing.

4 I'm sorry, sir.

5 Q Oh, yes, we were talking about how it was Allen
6 who didn't like the name M&H Studios.

7 A I don't remember whether it was Allen or Phil.

8 Q One of them?

9 A Yes.

10 Q It was at the Baur au Lac?

11 A Yes.

12 Q And he said terrible name, it is worth 50 points.

13 Let me read you something in the narrative.

14 "Somewhere on October 17, 19" -- excuse me.

15 When you came back to New York in June you met with
16 Bud Moss, didn't you?

17 A Yes, sir.

18 Q And you told him that you had made arrangements
19 about this underwriting?

20 A Yes, sir.

21 Q And you met with him almost immediately after
22 you came back?

23 A We had met prior also.

24 Q And you told him that the fellows you were
25 talking to didn't like the name M&H?

1 qwrf 4 D'Onofrio-cross

2 A I told him I didn't like it.

3 Q Didn't you tell him about Allen's reaction?

4 A No.

5 Q You just said you didn't like it?

6 A Of course.

7 Q What did he say, let's change it?

8 A He says, "I'll change it to whatever you want."

9 Q That is what I want.

10 I'm reading to you from your narrative and then
11 you tell me what happened.

12 "Somewhere on October" -- Mr. Pfingst wasn't
13 there when you told him about it, was he?

14 A When I told Mr. Moss?

15 Q Yes.

16 A He may have been. I'm not sure.

17 Q You don't remember?

18 A I think he was because he would have accomplished
19 it as the attorney.

20 Q I know. He didn't have to be there when --

21 A He was around there quite a bit.

22 Q All right.

23 "Somewhere on October 17, 1968, I believe, it was
24 Joe Pfingst and I think met with Bud Moss and we decided
25 the M&H Studios, Inc. name was not the name to go with."

Is that right?

1 qwrif 5

D'Onofrio-cross

2 A We made the physical change that day, yes.

3 Q You actually made the physical change?

4 A On or about that time.

5 Q Had you ever told him before that --

6 A We applied to New York State for the names that
7 Jerry recommended, Kinetnetrics or Kinetoscope, and
8 everything we applied with New York State turned us down
9 on.

10 I said, "We can't get it, Jerry."

11 He says, "Take any damn name then."

12 We made applications in August and September for
13 those fancy names. It is on the corporate books.

14 Q In this conversation on October 7, 1968 you had
15 already concluded that the name should be changed, right?

16 A Legally.

17 Q You had already taken steps about it?

18 A Yes.

19 Q You had already filed papers?

20 A That is correct, sir.

21 Q No question about it, that is the way --

22 A We took the lesser of the names that we could get
23 approved.

24 Q And everybody agreed that the name should be
25 changed?

1 gwrfr 6

D'Onofrio-cross

2 A Yes, sir, anything but M&H Studios.

3 Q Who did the name change?

4 A You mean the lawyer who did it?

5 Q Yes.

6 A I think Patrick Barton did it -- no, I think it
7 was Marilyn Hertzfeld's brother who did the name change
8 because he held the original corporate books. But I'm
9 not sure whether it was Pat Barton or Marilyn Hertzfeld's
10 brother.

11 Q What is your best recollection?

12 A That is my best recollection, I'm not sure, one
13 or the other.

14 Q Pat Barton or somebody else, right?

15 A Or Marilyn Hertzfeld's brother, the lawyer.

16 Q Wasn't there some conversation that you took
17 part in with Pat Barton about changing the name?

18 A There could have been.

19 Q Was there or wasn't there?

20 A I don't recall. I don't recall. I just recall
21 telling him to do it.

22 Q You recall telling whom to do it?

23 A Part Barton to get the name changed. How
24 he accomplished it, whether Marilyn's brother did it or whether
25 he did it --

1 gwrf 8

D'Onofrio-cross

2 Q It is my error, I'm sorry.

3 "I believe Joe Pfingst made the name change for
4 the corporation with New York State. I am not precisely
5 sure. This was during his election campaign. Joe was
6 running for Supreme Court Judge at the time and he may not
7 have handled the paperwork and may have shifted it to his
8 nephew Patrick Barton because just about this time or right
9 prior to when Joe decided he was going to run for Supreme
10 Court judgship he told us that he would supervise the
11 work that Patric was doing, and then if he was elected
12 on November 1st and got the Supreme Court judgship, then
13 when the company eventually did go public, Patrick would
14 share in the fees with him, but that he would be free to
15 guide Pat Barton during the rest of the year until he
16 took his oath of office somewhere at the end of December
17 or January 1st of 1969, and we conducted ourselves mostly
18 with Joe Pfingst doing most of the work."

19 Did you write those words?

20 A Yes, sir.

21 MR. SORKIN: Your Honor, how about the next sentence?
22 Mr. Gould, if you don't mind, for the sake of completeness.

23 MR. GOULD: I'm grateful for the suggestion.
24 I am going to get to it.

25 Q You wrote those words, didn't you?

1 gwrf 9 D'Onofrio-cross

2 A Yes, sir.

3 Q And you talked them into a dictating machine,
4 right?

5 A Yes, sir.

6 Q And they were transcribed?

7 A Yes.

8 Q And you signed the paper?

9 A Yes, sir.

10 Q And gave it to the Government?

11 A Yes, sir.

12 Q And you thought it was the truth?

13 A To the best of my recollection.

14 Q You didn't say a word about Marilyn Hertzfeld's
15 brother in there, did you?

16 A At the time I don't know if I did or I didn't.

17 Q Look at it. Is there a word in there about
18 Marilyn Hertzfeld's brother?

19 A I don't know. I don't remember the document. I
20 didn't memorize it.

21 Q You do remember the document?

22 A But I didn't memorize the words in the document.
23 This is not a stage, this is a courtroom. I'm not an actor,
24 I'm a witness. I'm not memorizing documents.

25 Q Did I suggest that you memorize --

1' gwrf 10

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2 A You did at one time here.

3 Q When was that?

4 A When you told me, that Mr. Sorkin --you used words
5 to the extent of, not briefing, much stronger than that,
6 coach.

7 Q Rehearse?

8 A Rehearse indicates acting.

9 Q That was something else.

10 A I'm not an actor, I did not memorize that.
11 You don't give me a cue and I don't give you an answer.
12 Just ask me the questions and I'll give you --

13 Q His Honor is going to chastise both of us in
14 a minute. I just want to know, did you mention Marilyn
15 Hertzfeld's brother in it? Look at it. You don't have
16 to memorize anything. Read it.

17 A I just said it is not a material factor, that this
18 is at the point -- no, I don't mention Marilyn Hertzfeld.
19 You say I'm not familiar with who did it.

20 Q In this narrative you said, "And we conducted
21 ourselves mostly with Joe Pfingst doing most of the work."

22 A Get to the beginning of the narrative, not at
23 the end. Don't pluck out little pieces. I'm not sure.
24 Does it not say that?

25 Q But you were sure here the other day, weren't you?

1 qwrfl 11

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2 A But you are trying to make me say I'm sure on
3 that narrative to a certain part which is not true. The
4 whole narrative starts with the negative that I'm not
5 sure. I'm not precisely sure. What more could be honest
6 than that, a person saying that he is not precisely sure.

7 Q Mr. D'Onofrio, when you testified here the other
8 day, and you were asked the questions about the conversations,
9 about the change of name, did you say you were not sure
10 about the conversations?

11 A Change of name?

12 Q The change of name from -- I will read it to you
13 again.

14 A Read it to me.

15 Q When you were asked about the conversations about
16 changing the name of M&H Studios, did you say one word
17 about how you are not sure?

18 A Mr. Gould, I do not remember what I said here
19 the other day. Do you want to repeat it to me? Repeat it to
20 me. I told you I'm not a memory expert. If you want me to
21 give you substance, I'll give you substance.

22 Q You remember testifying here the other
23 day, sir, page 151 of the transcript, "When did you
24 next meet Frank?"

25 "The question is" -- and I think the Court put

1 gwrf :2 D'Onofrio-cross
2 this question to you --"The question is, when did you next
3 meet Frank, as I understand it? Is that right, Mr.
4 Sorkin?"
5 A I cannot hear you, sir.
6 Q The question is, "When did you next meet Frank" --
7 161 of the transcript --"as I understand it? Is that right,
8 Mr. Sorkin"?
9 That was the Court who put the question.
10 "Mr. Sorkin: After the Baur au Lac.
11 "The Court. After the meetings in the Baur au Lac
12 Hotel?
13 "Mr. Sorkin: Yes, your Honor.
14 "A I met him in September 1968."
15 Did you give that answer or not?
16 A Yes, sir.

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Q Now, sir, you have testified here this afternoon that you had a meeting with Mr. Frank in July 1969, isn't that right?

A It may be later July, mid-July, I am not sure of the date, sir.

Q Mr. D'Onofrio --

A But that is what I testified to.

Q You testified this afternoon that you had two conversations with Mr. Frank about the destruction of a paper and that one of them was in April --

A And one was July or late June, or in that time.

Q You told me that the reference to the July conversation was the first time you had ever mentioned the two conversations with Frank about the letter?

A In front of this courtroom?

Q In front of anybody.

A Well, I am not sure about the Government, I don't recall.

MR. GOULD: Your Honor, I am going to have to ask if counsel wants to concede that or if I have to pursue the subject.

MR. SORKIN: It seems to me, your Honor, Mr. Gould is bound by his answer. I don't see what the Government has to concede. There are a number of things

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Mr. D'Onofrio told the Government that have not come out in this trial and he knows it full well.

MR. GOULD: I think that is an extremely improper remark about this subject we are discussing, your Honor. I don't see the relevancy of it.

Q Mr. Witness, would you be good enough to tell us if in your recollection there is any other time, place or occasion prior to this afternoon when you have testified, either under oath, before a Court, a grand jury or informally that there were two conversations with Martin Frank about the destruction of the paper, one in April and one in July?

A I cannot recall, but there could have been.

Q Now, sir, you testified in this case at page 151 in response to his Honor's question when his Honor asked you, "When did you next meet Frank," and then Mr. Sorkin said, "After the Baur au Lac?" And you said, "Yes, after September 1968."

A Concerning Training With The Pros. I met him in between, I am sure.

Q The meeting in July 1969 was concerned with Training With The Pros?

A Let's go back to the last question. You have me confused, you are jumping two questions, two different

1 years. You said the next time I met him, but Mr. Sorkin
2 didn't bring out concerning Training With The Pros. I met
3 Mr. Frank many times during 1968 in July and in August
4 but concerning other stocks.
5

6 Q I see, other matters, not this one?

7 A Other stocks.

8 Q You remember testifying in this case the other
9 day, page 250 of the transcript -- do you remember this
10 conversation, you were asked a question:

11 "Q You were asked to describe a conversation you
12 had with Mr. Herbert in Zurich, telephone call, you were
13 at your home in Brookville and you spoke to him on the
14 telephone and you told Herbert you just received a phone
15 call, and so on, from Stoller. Do you remember that
16 conversation?"

17 A Would you repeat that? I didn't hear your
18 beginning.

19 Q "Tell us what he said to you and what you said
20 to him."

21 Did you hear that?

22 A That I did, yes.

23 Q "I told Mr. Herbert that I had just received
24 a phone call -- I believe I said a French phone call --
25 from Mr. Stoller."

Did you hear that all right?

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A Yes, sir.

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Q "And Mr. Stoller had told me that the stock we had given to Bank Hofmann and Training With The Pros was not going to be transferred by Emanuel Deetjen because of some physically paperwork complications and that we are in danger of losing a million dollars."

8

A Yes, sir.

9

Q Do you remember giving that testimony?

10

A Yes, sir.

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Q Then you went on to say, after describing another part of the conversation, "The other problem is that the man in the office in Luzern" -- this is Herbert talking to you --

15

A Lausanne.

16

Q It should have been --

17

A You mean the court reporter made an error?

18

Q Yes, sir.

19

A Yesterday or the day before?

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MR. SORKIN: We will concede it is Lausanne, your Honor.

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Q "He says the other problem is that the man in the office in Lausanne in Switzerland, Emanuel Deetjen, a good friend of mine, I will have to give about 5,000 Swiss francs today and you think how I hate to talk to Phil about parting with money."

1 Do you remember that testimony?

2 A Yes, sir, very well, sir.

3 Q "I wanted to make him think the problem was
4 in indeed more serious than actually it is, but if I am
5 armed with the documents and you give me permission to
6 expend the 5,000 Swiss francs or whatever is needed, I
7 can probably have it done."

8 Do you recall that testimony?

9 A Yes, sir, I do recall it.

10 Q Do you recall testifying before the grand jury
11 back in July 1973 and being asked this question --

12 MR. SORKIN: Page, please.

13 MR. GOULD: RSK 2.

14 Q "Q During the period of the first manipulation
15 of Training With The Pros were there payments made to
16 anyone in connection with that? By payments I am referring
17 to cash payoffs or bribes to people to influence their
18 purchases and sales.

19 "A I don't know if you could refer to it in that
20 fashion. All I know is that myself and my co-conspirators
21 received a great deal of money."

22 Do you remember giving that answer?

23 A Yes, I do, sir.

24 Q You didn't say anything about the 5,000 Swiss
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francs to this fellow Deetjen, did you?

A That is somebody else's obligation, not mine.

Q Whose obligation was it?

A Freddie's, from his percentage, but he may have needed additional money.

Q So when you were answering Mr. Brodsky in the grand jury you knew that there had been, or at least --

A I didn't know.

Q Herbert had told you that was a payment?

A Herbert had told me he paid off Ballmer, he paid off nine people, but I don't know if he paid them off.

Q You didn't mention it in the grand jury?

A I was not asked to go into detail in the grand jury, but I told the Department of Justice.

Q Whom did you tell in the Department?

A I don't remember where and when, sir.

Q You have no idea whom you told?

A I may have told it first to Mr. Doonan and then repeated it at some other time more than once or twice to Mr. Sorkin.

Q But we are clear you didn't tell it to the grand jury back in July '73?

A I told you I had no recollection of the whole caper at that time. I was busy with nine other crimes,

including my own sentencing.

Excuse me, what date, July when --

Q '73.

A July what, sir?

THE COURT: 10th.

THE WITNESS: Well, I was sentenced, I think, on the 12th or 14th by Judge Weinstein, so my mind was -- I was pretty upset at the time and my mind may not have been very, very clear.

Q Did you ask Mr. Brodsky to adjourn your appearance before the grand jury?

A No, sir.

Q You knew this was pretty serious stuff?

A Yes, but I knew the crime was committed and the people who committed it and I was not bringing in people that were not guilty people or anything else and I told the truth to my best recollection and my best knowledge at that time. Why he wanted it so quickly, I was not going to dictate to the Department of Justice why they wanted me at that moment, even though I knew three days later I may wind up in a penitentiary from Judge Weinstein.

Q Are you finished?

A Yes, I am finished.

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2 Q You remember testifying at page 319 of the
3 transcript, the testimony here in this case, 319, 320,
4 and you are testifying now about conversations between you
5 and Mr. Frank --

6 A Before who?

7 Q Mr. Frank.

8 A Yes, sir.

9 Q "I said, look Marty," you said -- "Look, Marty,
10 I believe the people who told me and I don't believe you.
11 Secondly, you were at the bank today and you told the
12 bank that I owed you \$100,000 in legal fees and that I
13 was a no good SOB and that I was greatly indebted to you.
14 You know this is a goddam lie because I don't owe you any
15 \$100,000 in legal fees."

16 "He says, Ray, I just said that in order to keep
17 the story straight.

18 "I said, Marty, let me tell you something here
19 and now, to my knowledge this is your first visit to
20 Switzerland, I may be wrong, why the hell you ever came
21 over to rescue Phil Stoller, that son of a bitch is beyond
22 me, that he could drag you over. Whatever he holds over
23 you to drag you over, I can't figure, but you get your
24 ass on an airplane and get back to the United States.
25 You leave Bank Hofmann alone. You can tell Phil at the

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time that he better not cause any more waves at Bank Hofmann or any place else for me because as you know I have been trying to work out a deal with the United States Government."

Is that what you said in this case?

A Yes, sir.

Q Well, now, in your narrative you have a reference to that conversation, correct?

A Yes. It is not complete, but it is there.

Q I know. And you said in the narrative, page 10, when you described this conversation with Marty, "I am telling you one thing, Marty, if I ever get back and make my deal with the United States Government I'm going to hang your goddam partner for getting you to do this."

Is that what you said?

A That is what I remember saying, yes.

Q Well, which is right?

A Actually, both of them are right. I was going to hang him, bury him, do anything I could if I made a deal. If the Government asked me any questions about Mr. Stoller I would no longer take the Fifth Amendment, like I did in the Eastern District and go to jail for it. I would tell the truth and let him worry about his own ass.

2 Q Did you say to Frank that Stoller better not
3 make any waves or that you were going to hang them?

4 A I think I said both. I think I left it out like
5 I left a lot others out --

6 Q You forgot about it?

7 A Yes, because I didn't perform a memory exercise.
8 I told you this isn't a theater.

9 Q Did you tell Frank in that conversation that you
10 were very close to making a deal with the United States
11 Government?

12 A We discussed it at length.

13 Q Did you use the words in the conversation, "I'm
14 very close to making a deal with the United States
15 Government"?

16 A Yes, I used the word "deal."

17 Q Did you use the words "I'm very close to making
18 a deal" -- "very close"?

19 A Yes, sir.

20 Q Did you say that in the narrative?

21 A Possibly not.

22 Q Might have left it out?

23 A I might have left it out.

24 MR. GOULD: Would your Honor excuse me for
25 just a moment while I see what I have left to do?

1 THE WITNESS: Your Honor, if we are going to be
2 here a lengthy time, could I get a glass of water?

3 THE COURT: I don't think we are going to be
4 here a lengthy time, but if you want some water, you
5 certainly may have it.

6 THE WITNESS: Because I am a diabetic and I
7 usually get a lot of fluids.

8 (Pause.)

9 Q Mr. D'Onofrio, did you tell us where you live
10 now?

11 A Could I tell you?

12 Q Did you tell us at any time during this case?

13 A I don't recall.

14 Q I am going to ask you, where do you live?

15 A I live in three places now. My official
16 residence is Las Vegas, Nevada. When I come into New
17 York for the Government I can't get a hotel at \$16 a day,
18 and I have tried all over New York City, and I live
19 in my mother's old apartment, 312 Lynton Avenue,
20 Lindenhurst, New York.

21 Q What is the third place? I don't care about the
22 address.

23 A After I leave Nevada and complete my work I
24 usually spend the time with my son and former wife that
25

I am reconciling with in Denver, Colorado.

Q You have three places of residence?

A Yes.

Q Your official residence is in Las Vegas?

A Yes.

Q You have an apartment there?

A I have a room.

Q You have a room?

A Yes, sir.

Q Is that a room at 4507 Buckeye Avenue?

A I have a room in the home of my secretary
and her husband.

Q Is that a Mr. Royster?

A Yes, sir.

Q Mr. Royster's wife is your secretary?

A In my company, Galco Leasing Systems -- the company
I work for.

Q Do you know Mr. Royster?

A I never met him.

Q Have you ever seen him?

A No.

Q Have you ever been in the room at 4507 Buckeye
Avenue?

A Yes, sir.

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Q How many times?

A Once, sir.

Q You signed a lease there?

A No, sir, I signed a lease at the lawyer's office. I don't like to interrupt their way of living. They are living in the apartment and I usually try to stay at hotels when I am there.

Q As I understand it, you have told people that you live in Las Vegas?

A I do, sir.

Q In the last two years how many times have you been in Las Vegas?

A Oh, God, 35, 40 times.

Q Where do you live in Las Vegas?

A I stay at Hotels, I stay at the Union. When they are not there, I don't like to disturb them, because it is the confines of husband and wife. You know, being a criminal, Mr. --

Q What did you rent the room for thirty some odd dollars a month?

Why did you rent the room?

A Because I work out there.

Q You never used the room, did you?

A Yes, sir.

2 Q How many times?

3 A I told you at least once or twice but I don't
4 live in a hotel. I couldn't afford it.

5 Q When you put in your expense vouchers for the
6 Government, what do you show as your residence?

7 A Las Vegas, Nevada.

8 Q You get paid mileage?

9 A Yes, sir, and I go there.

10 Q Every time you put in a voucher you say you went
11 back to Las Vegas?

12 A In every case I do, sir.

13 Q You do go back to Las Vegas?

14 A Yes, sir.

15 Q But you don't stay at the only residence you
16 have there which is at 4507 Buckeye Avenue?

17 A A lot of times I stay with my partner, a lawyer
18 named John Span, in his trailer, out at the tennis courts.
19 I live with him. He is a bachelor, and sometimes I go
20 into hotels and sometimes I stay with my cousin at his
21 apartment but I spend very little time confined in what
22 I would call a cell in the apartment I rent.

23 Q Am I not right, sir, that the only place of
24 residence that you have in Las Vegas is a room in a private
25 home at 4507 Buckeye Avenue, that you signed the lease

with a Mr. L. Royster for that room --

A Larry Royster, yes.

Q And that you have been in it only once and that you have never laid eyes on Mr. Royster or Mr. Royster on you?

A Excuse me --

Q On Mr. Royster or he on you.

A I have never seen Mr. Royster, no, sir. He is a musician, he plays at night.

Q And you have spent exactly how much time in that place?

A I told you, once or twice.

Q When did you rent it?

A Oh, I believe a year ago last June or July, I am not sure.

MR. SORKIN: Your Honor, I object --

A With John getting the trailer, I spend most of my time with him.

MR. SORKIN: I fail to see the relevancy and I object, your Honor.

THE COURT: Well, it has all been asked extensively now and it is a little late to object. This has been going on for five minutes. I clocked it.

MR. SORKIN: My objection is to proceeding

2 along these lines.

3 THE COURT: More important from my point of
4 view at the moment is this: Do you have any more to do,
5 Mr. Gould?

6 MR. GOULD: I want to ask him one thing about
7 Nevada, your Honor.

8 Q You say Nevada is your legal residence?

9 A Well, I don't really know the term of legal
10 residence. I have a driver's license from Nevada, I reside
11 in Nevada, I work in Nevada, because when I get the weekends
12 off from the Government I go to my office there and do
13 my paperwork, and if I get more time --

14 Q What name do you use out there?

15 A Ramon N. D'Onofrio.

16 Q Have you filed a certificate of residence
17 under Section 2070A0 of the revised statutes of Nevada?

18 A I don't know of any such --

19 Q You don't know what that is?

20 A No, sir. I wish you would tell me, because
21 if I should file a certificate --

22 Q It would be extremely improper for me and I will
23 not respond.

24 MR. GOULD: I don't think I will go into this.

25 THE COURT: Ladies and gentlemen, we will

1 suspend now until Monday, as you know, and on Monday,
2 ladies and gentlemen, I have another case early in the
3 morning and I hope to finish it at 10:30, but in the
4 exercise of caution, rather than have you or the lawyers
5 or anybody come in and sit around waiting for me, I am
6 going to ask you to come in at a minute or two before 11:00
7 o'clock -- 11:00 o'clock -- on Monday morning. We
8 will keep in mind that we will have to suspend Monday
9 afternoon for the religious holidays, which you have
10 already been told about.
11

12 So you know we have by no means heard everything
13 yet and I ask you to keep the case out of your mind and
14 not discuss it or think about it and have a pleasant
15 weekend.

16 Goodnight.

17 (Adjourned to Monday, September 16, 1974, at
18 11:00 a.m.)
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